

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

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BY: C. Flich

STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY FORTY-FIVE

MAY 12, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

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2 FOR THE COUNTY OF YAVAPAI
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4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant)
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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Thursday, May 12,
3 2011, at Yavapai County Superior Court, Division
4 Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.

PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of Mr. Ray, Mr. Li, Mr. Kelly, and for the state, Ms. Polk and Mr. Hughes.

Mr. Kelly.

MR. KELLY: Judge, good morning. The issue this morning relates to a statement made yesterday afternoon by Ms. Polk. And that was relating to the identity of the remaining witnesses. During that conversation, she indicated to this court that the state did not intend to call any of the victims to the witness stand. That of course, would include a lady by the name of Ginny Brown, who is present in the courtroom. After we returned to Prescott, we received an email transmission last night indicating that the state intended to call Ms. Brown today.

I have reviewed your order of February 22nd, 2011. And it clearly states in the final line, It's ordered granting the motion in limine and excluding victim impact testimony.

We're not sure the purpose of calling Ms. Brown. But if it -- we're assuming it relates

to identifying Kirby Brown's signature on some financial documents. That's a pure assumption, Judge. If it's not the included victim impact testimony, perhaps it's to identify Kirby Brown's signature.

And, again, Judge, I believe admissibility of that financial information, which goes beyond the scope of the Angel Valley ceremony in October of 2009 is the subject of court order.

We've discussed that repeatedly in the past couple weeks. So, again, I'm making an assumption as to the purpose of the testimony. I believe that's it. I wouldn't imagine the state would violate this court order and provide impact testimony. I guess we'll have to ask Ms. Polk.

But that is the issue, Judge.

THE COURT: Thank you.

Ms. Polk.

MS. POLK: Your Honor, the state does intend to call Ginny Brown this afternoon. She's the mother of Kirby Brown. And I have carefully reviewed the Court's minute entry dated February 22nd, 2011, regarding testimony of victims, family members.

In that order the Court stated that the

state cannot be forced to accept stipulations relating to the elements of an offense, and the state is allowed to prove the identity of the persons named as the victims in the indictment.

The Court further noted that appropriate background evidence, in order to give the jury a meaningful context in which to determine factual issues, is admissible. And that talking about the mental state of victims as it aids the jury in understanding why the victims remained in the sweat lodge, the Court noted, it may be relevant and admissible, but the Court cannot speculate as to the actual evidence offered and the potential legal basis for admissibility.

Your Honor, I do not intend to violate the Court's order. I will establish through Mrs. Brown that -- the identity of Kirby Brown, a little bit about her background, where she was living, have her describe -- have Mrs. Brown describe Kirby's personality for the jury as it relates to Kirby's conduct inside the sweat lodge.

That Kirby's background with James Ray International, because Kirby had actually attended a Free Harmonic Wealth Weekend with one of her parents. Both parents have attended the Free

Harmonic Wealth Weekend. And then the client file that the state will be moving to admit. Actually, Mrs. Brown can recognize Kirby's signature on the credit card, one of the payments for Quantum Leap, which was an event Kirby had signed up for. Mrs. Brown actually signed the credit card receipt for that.

And then the events that led to Kirby arriving in Sedona, how she got there, how they learned that Kirby had passed away and then information that Mrs. Brown may know about the other families of the other two victims.

And, Your Honor, Mrs. Brown is part of a -- she's a plaintiff in a class action lawsuit against James Ray International. I don't know if the defendant himself is personally a defendant in that case.

She's a defendant in a class action suit that is seeking the return of the deposits that people, including Kirby, had made for future events. Kirby had paid for Quantum Leap, which was to occur after Spiritual Warrior 2009. And that money has never been returned to the Brown family.

THE COURT: There is the offer, Mr. Kelly.

MR. KELLY: Judge, again, I would refer you to

1 your February 22nd, 2011, minute entry. And
2 Ms. Polk left out a critical word. It indicates
3 the Court is unable, is unable, to assume that lay
4 testimony regarding the health of a family member
5 would, quote, aid the jury in understanding why the
6 victims remained in the sweat lodge.

7 In regards to the comment relating to the
8 identity of Kirby Brown, I believe the evidence and
9 the record is clear that the state has, in fact,
10 agreed to a stipulation that Kirby Brown was a
11 participant, that she's a decedent, that her
12 medical records are in evidence. I believe the
13 release and waiver signed by Ms. Brown are in
14 evidence.

15 The only thing objected was the condition
16 of financial information. Identity is not an
17 issue, and the record speaks for itself in that
18 regard.

19 This proposal that somehow Ms. Brown's
20 personality would relate to her conduct in the
21 sweat lodge -- first of all, Judge, I don't believe
22 that there would be any factual or psychological
23 basis to make that assumption.

24 But more importantly, simply based on the
25 rules of evidence, this witness, Ginny Brown, would

10

1 lack foundation. And any opinion that she would
2 have since she was not at the October 2009 incident
3 would be pure speculation and not admissible. She
4 could, I would assume, never lay the foundation to
5 draw that conclusion since she was not present.

6 And, of course, the -- just going down
7 that line of testimony with the victim's mom on the
8 witness stand presents significant 403
9 considerations, which we've discussed throughout
10 the course of this trial.

11 I don't understand, again, how any
12 information regarding Kirby Brown's background with
13 JRI could be established by a witness -- by a lay
14 witness who is not a custodian of records at JRI.
15 And it would simply be asking for hearsay
16 information, which both the personality equals
17 conduct in the sweat lodge and the background as to
18 the relationship between Kirby Brown and JRI would
19 present significant confrontation issues. There is
20 no way for us to challenge that since it's strictly
21 based on hearsay.

22 The fact that she is a plaintiff in a
23 lawsuit against James Ray International, I'm not
24 sure what the relevance of that is in any respect.

25 THE COURT: I think it's a disclosure.

1 MR. KELLY: And thank you for that. But,
2 again, I think your February 22nd minute entry is
3 well written.

4 I agree with the Court that we're unable
5 to assume that lay testimony regarding the health
6 of a family member who would aid the jury in
7 understanding why the victims remained in the sweat
8 lodge. And consistent, I believe it's a further
9 stretch for a mother to describe the personality of
10 her daughter and somehow when she's not present,
11 how that would aid the jury in making a
12 determination when the culpable mental state in
13 this case is recklessness.

14 Finally, Judge, it sounds like much of
15 this is character evidence. The 404(a)(b)
16 discusses character of a victim and the conclusion
17 in that regard. Evidence of a person's character
18 or trait of character is not admissible for the
19 purpose of proving action and conformity therewith.

20 Then, specifically, The exception
21 regarding self-defense when you know the aggressive
22 nature of a victim. Sometimes admissible. So it
23 would fly in the face of 404 as well.

24 Again, Judge, I guess my assumption was
25 wrong. I thought it was to establish that one

12

1 particular exhibit that's been contested, it was
2 Kirby Brown's signature. It's apparently much,
3 much more detailed than that. And I'd ask the
4 Court to enforce its February 22nd ruling and not
5 allow this witness to testify today.

6 THE COURT: It was also represented to this
7 court that those witnesses were not going to be
8 called. That was stated in open court, Ms. Polk.

9 MS. POLK: Your Honor, it was. But in the
10 same recitation, I did state that I reserved the
11 right to continue to review and determine what this
12 case needed.

13 As the Court knows, we have three client
14 files relating to the three victims that have not
15 been admitted. But every time I've corresponded
16 with the defense about who we intend to call, I've
17 always reserved the option to reconsider and call
18 anybody from our witness list.

19 Mrs. Brown was disclosed on our witness
20 list. She's always been on our witness list. And
21 as the Court knows, I had noted yesterday that we
22 would have extra time today. And Mrs. Brown is
23 here in town. And I believe it's appropriate to
24 call her staying within the confines of the court
25 order.

1 THE COURT: Well, as I said, I had to just
2 speculate as to what might be offered. Mr. Kelly's
3 last point is the one that bothered me initially
4 with this proposed testimony. Character evidence.

5 Ms. Polk, it appears you just want to
6 offer character evidence. That would be, it seems
7 to me, a direct violation of 404(a) and the posture
8 that would put this trial in. How is that
9 permissible under 404(a)? Maybe I'm missing
10 something. I want you to address that
11 specifically.

12 MS. POLK: Your Honor, I was looking at
13 Rule 406 that talks about habit and routine
14 practice. And states, the evidence of a habit of a
15 person or a routine practice of an organization,
16 whether corroborated or not, and regardless of the
17 presence of eyewitnesses, is relevant to prove that
18 the conduct of the person or organization on a
19 particular occasion was in conformity with a habit
20 or routine practice.

21 The issue in this case, upon
22 cross-examination of the participants in the 2009
23 sweat lodge, has repeatedly been that you had a
24 free choice, that you could leave at any time. And
25 I believe that information relating to Kirby Brown

1 and her regular habit of a couple of things -- one,
2 being determined to improve herself, and, second,
3 being her competitiveness and her desire to excel
4 or do well at things that she did, and then
5 finally, her practice of being compassionate,
6 looking out for people around her -- are all three
7 things that the jury can consider in determining
8 why it is that she stayed in, that at some point
9 she didn't come out.

10 THE COURT: I'm going to need some case
11 authority on that. The case in all the various
12 evidentiary issues that have come up -- and now
13 when I said, we need to have the trial started. If
14 you have legal issues, we need to know ahead of
15 time.

16 We're supposed to be starting the trial
17 right now. And there is this type of legal issue
18 presented. And, to my knowledge, Ms. Polk, not any
19 case that would indicate something like a habit of
20 those characteristics you named. That's really
21 what's meant by "habit," as opposed to somebody
22 drives the same way to work every day or something
23 like that.

24 It seems to me you're getting into
25 character issues with no law. And having this come

1 out this morning -- I'm not going to permit it
2 without -- now that the offer is there -- authority
3 to allow that. If it's going to be foundation, I
4 don't know if the defense wants to just stipulate
5 to signatures or something, and that would take
6 care of that.

7 But I've indicated before the real
8 potential when you have victim impact testimony --
9 please. If you have case law, let me know. But
10 the relevance of that -- I'm not going to permit it
11 today. It was represented to this Court that was
12 not going to be evidence that was going to be
13 tendered.

14 I don't know exactly what you said,
15 Ms. Polk. I'll take you're avowal that you
16 indicated you would keep evaluating. And I think
17 that goes without saying anyway a person's going to
18 do that.

19 But I'm not going to permit it today.

20 MS. POLK: Your Honor, the state would
21 withdraw that portion of her testimony, but she --
22 we would still intend to call her to establish the
23 foundation to admit the client files for Kirby
24 Brown, also to establish the identity.

25 And, as the Court acknowledged in the

1 minute entry, that admitting appropriate background
2 evidence in order to give the jury a meaningful
3 context in which to determine the factual issues.

4 The history of Kirby attending with
5 her -- one of her parents the Harmonic Wealth
6 Weekend and then subsequently signing up for two
7 events, Spiritual Warrior Retreat and Quantum Leap,
8 I believe, would be admissible. That where she was
9 living --

10 THE COURT: But I have to ask. The avenue for
11 that, so we don't have a situation where there is
12 just hearsay that's going to come out, is the
13 avenue because Ms. Kirby Brown said this is what
14 I'm doing? I mean, if someone actually traveled
15 and they went to a seminar together, there is
16 direct knowledge they're at a seminar. But I'm
17 just trying to think ahead and how many hearsay
18 type of situations might arise.

19 MS. POLK: And I didn't follow the Court. Is
20 that with respect to when she signed up for the
21 event or how she arrived at Sedona?

22 THE COURT: I don't know. Possibly.

23 MS. POLK: The family was with her when she
24 signed up. Mrs. Brown actually paid for a portion
25 of the Quantum Leap. And that's part of the client

1 file. Virginia Brown's signature is part of that
2 client file.

3 And certainly Ms. Brown knows where her
4 daughter was living prior to coming to Sedona for
5 the event, knows what sort of work her daughter was
6 involved in, and on that day -- I guess arguably
7 this is hearsay. But on that day Kirby called the
8 family as she made the trip. She drove in a truck
9 to Sedona and called the family. She made that
10 trip.

11 And just a little bit of background about
12 the family. Every witness has testified about
13 background. Every witness has told the jury the
14 community they live in, the sort of work they've
15 done, the education that they've had, the -- where
16 they currently are working. And that information
17 would come in through Mrs. Brown as well.

18 THE COURT: Mr. Kelly.

19 MR. KELLY: Judge, there are significant
20 confrontation issues. It appears to be simply
21 based on hearsay information. So we are going to
22 assert my client's constitutional rights and submit
23 the issue to the Court.

24 It's my understanding that now we're
25 late, that today Mr. Barbaro is to be finished and

1 Sara Mercer. I would submit to the Judge, based on
2 the experience I have in this particular case, that
3 that is going to take the remainder of the day.

4 I would ask that today Ms. Brown not be
5 allowed to testify, that the state put in writing
6 it's proffer as to the purpose of her testimony so
7 that instead of making an argument against one
8 particular request, then when that's rebutted, as
9 an example, under 404, then the response is, well,
10 it's admissible under habits. We go back and
11 forth. It takes forever.

12 We have a break. I ask that we settle
13 this issue during the break, without waiving any
14 objection to Ms. Brown's testimony. I just want to
15 speed things up. I can respond to Ms. Polk right
16 now. But I believe that's the better course since
17 we have a jury waiting.

18 Finally, Judge, I do have one other
19 witness, state's witness, and trial schedule issue
20 that I'd ask some time today to discuss with the
21 Court. It doesn't need to be right now.

22 THE COURT: In terms of background
23 information, Ms. Polk, there is discretion
24 regarding background. Normally I think it has to
25 do with a witness and so someone gets a little bit

1 of a picture or what a witness or who a witness is,
2 what a witness is about.

3 But, again, without authority, and having
4 this come up now, now, right now when we're late to
5 start the trial, I'm not going to permit the
6 testimony today.

7 And I'll just tell the -- the one thing
8 is if the defense is telling me they would not
9 stipulate to identification of signatures, if
10 that's an issue, I would permit that. If that's
11 going to be an issue for foundation, I'm going to
12 permit that, Ms. Polk. I'm not going to delay
13 that.

14 But in terms of allowing testimony
15 which -- you seem to really be indicating what I
16 think is character testimony, it sounds to me. I
17 need to see some briefing on that. I'm not going
18 to permit that.

19 So -- please. If you want to talk about
20 the signatures. If the -- if the defense won't
21 stipulate, I'm going to permit that.

22 MS. POLK: Your Honor, you're going to permit
23 it today if the defense won't stipulate?

24 THE COURT: Yes.

25 MS. POLK: And just if I can make a record.

1 THE COURT: Please.

2 MS. POLK: The state is doing our best to
3 whittle down, to narrow down, these witnesses. But
4 we do reserve the right to call any witnesses.
5 We've tried to communicate with the defense, give
6 them the advance witnesses we intend to call for
7 the week.

8 But I just want to make it clear that in
9 doing so, that we are never withdrawing a witness
10 from the witness list. And as the posture of the
11 case changes day-to-day, as we decide a witness on
12 the witness list that we do want to call, we want
13 to reserve the right to call.

14 THE COURT: I understand how a general trial
15 process works and witnesses are listed. That can
16 happen. Things happen at trial.

17 Okay. Thank you. We'll start in just a
18 few minutes.

19 (Proceedings continued in the presence of
20 jury.)

21 THE COURT: The record will show the presence
22 of the defendant, Mr. Ray; the attorneys, the jury.
23 And the witness, Sergeant Barbaro, has returned to
24 the stand. He's previously been sworn.

25 And, Mr. Li, you may continue.

1 MR. LI: Thank you, Your Honor.

2 CROSS-EXAMINATION (Continued)

3 BY MR. LI:

4 Q. Good morning, Sergeant.

5 A. **Good morning.**

6 Q. Have a good evening?

7 A. **Yes.**

8 Q. Good.

9 Where we left off yesterday, we were
10 talking about the Orion Multigas Detector.

11 Remember that?

12 A. **Yes.**

13 Q. And that's the device that EMTs and first
14 responders use to go into areas and make sure that
15 they're not explosive; right?

16 A. **Yes.**

17 Q. And I don't remember if you said you used
18 them yourself before. But you've certainly seen
19 others around you use them?

20 A. **Yes, I have.**

21 Q. And so, for instance, when you go into a
22 meth lab, that would be something you would want to
23 use before you go in there; correct?

24 A. **Yes.**

25 Q. All right. And I believe you told this

22

1 jury that you have done a significant amount of
2 narcotics investigation and work.

3 A. **Yes.**

4 Q. And you're currently -- are you currently
5 part of an interdiction team?

6 A. **No.**

7 Q. Okay. So you were part of an
8 interdiction team, I think, '07 to '09, something
9 like that?

10 A. **Yes.**

11 Q. And as part of that, was one of your
12 duties to search and secure clandestine
13 methamphetamine labs?

14 A. **We actually had part of our narcotics**
15 **task force that would do that.**

16 Q. Okay.

17 A. **The interdiction team that I was on,**
18 **basically, before I became the CI sergeant, was**
19 **working on the highway, working drug loads.**

20 Q. Just cars going up and down 17?

21 A. **Yes.**

22 Q. And then you stop them, and then you
23 maybe put a dog on them; and then if it alerts,
24 then you -- you conduct your investigation from
25 there; correct?

1 A. **Yes.**

2 Q. But you have participated in numerous
3 numbers of narcotics investigations, I take it?

4 A. **Yes.**

5 Q. Now -- and we had talked yesterday about
6 what you do with the chemicals that you find when
7 you're conducting a search in one of your
8 investigations; right?

9 A. **No.**

10 Q. Okay. Well, when you get chemicals in an
11 investigation, you need to determine what they are;
12 correct?

13 A. **Yes.**

14 Q. And I think we had discussed yesterday
15 you send them to the DPS?

16 A. **Yes.**

17 Q. So that they can tell you this is
18 methamphetamine or this is just baby powder or this
19 is cocaine or whatever it might be?

20 A. **Yes. That's correct.**

21 Q. All right. Because you can't look at a
22 pile of powder and determine just by looking at it
23 that it's one thing or another?

24 A. **Yes.**

25 Q. So I'm going to put up on the overhead an

24

1 exhibit that's been entered into evidence --
2 Exhibit 345. And I'm not going ask -- go through
3 any of the details from it. But this is what a
4 report looks like, isn't it? When you send a
5 report in for test results on a chemical, you get
6 back a report like this that says -- you know --
7 this particular substance contains -- you know --
8 trace elements of cocaine or whatever it might be?

9 A. **Yes.**

10 Q. And it looks, basically, exactly like
11 that; right?

12 A. **Yes.**

13 Q. Now, just a quick question on this. As
14 part of your investigation, your training and
15 experience as an officer, you read these reports --
16 right? -- before you make any investigative
17 decisions; correct?

18 A. **Not all the time.**

19 Q. Well, you're not going to charge a guy
20 for possession of methamphetamine without knowing
21 that it actually is methamphetamine, are you?

22 A. **Yes. But we don't -- we didn't -- we**
23 **don't use the lab report to make the charging**
24 **decisions.**

25 Q. Okay. So you just, basically, test it

1 but -- you ever look at them?

2 **A. The lab reports?**

3 **Q.** Yes. Yes. It's a good idea to look at
4 them, isn't it?

5 **A. Yes.**

6 **Q.** If you're going to get something tested,
7 it's a good idea to review it? It's a bad idea not
8 to review it?

9 **A. Yes.**

10 **Q.** And if you see a bunch of chemicals on
11 the lab report when you get it back, it's a good
12 idea to know what those chemicals are. You would
13 agree with me on that?

14 **A. Yes.**

15 **Q.** Now, just really quickly, yesterday you
16 had testified about somebody you had seen receiving
17 CPR at the scene. And you now know -- do you
18 not? -- that three people passed away as a result
19 of this accident?

20 **A. Yes.**

21 **Q.** And two of the people that passed away
22 were Kirby Brown and James Shore; correct?

23 **A. Yes.**

24 **Q.** And they were the two that were behind
25 the sweat lodge that you and I sort of went over

1 their EMT records?

2 **A. Yes.**

3 **Q.** Do you remember that yesterday? So that
4 was the EMT, Dustin Chambliss. You remember him --

5 **A. Yes.**

6 **Q.** -- from the report? And another guy,
7 Greg Vanderhaar?

8 **A. Yes.**

9 **Q.** Okay. And those two EMTs were in charge
10 of the resuscitation efforts for Ms. Brown and
11 Mr. Shore behind the -- behind the sweat lodge.
12 Remember that?

13 **A. Yes.**

14 **Q.** And both of those patients had been
15 transported out of the scene before you even
16 arrived; right? We established that yesterday?

17 **A. Yes.**

18 **Q.** Now, the third person who passed away is
19 a woman named Liz Neuman. Are you aware of that?

20 **A. Yes.**

21 **Q.** Okay. Now, she actually was in roughly
22 the area that you're describing on that picture,
23 sort on -- maybe not on a tarp but outside of
24 the -- outside of the sweat lodge and sort of
25 forward a little.

1 Do you remember that?

2 **A. Yes.**

3 **Q.** Okay. Now, are you aware -- I had asked
4 you a number of questions yesterday about -- you
5 know -- her -- you wouldn't do CPR on somebody with
6 a racing heart rate?

7 **A. Yes.**

8 **Q.** Because the heart's actually working at
9 that point, and CPR might actually harm the
10 patient; correct?

11 **A. Yes.**

12 **Q.** Have you had a chance to see Ms. Neuman's
13 records about how she presented at the scene on
14 that day?

15 **A. No. Like I said, I wasn't the first
16 responder. So I really didn't have anything to do
17 with the investigation after what I did.**

18 **Q.** Will you take my word that her heart was
19 racing at the time -- at the time the EMT
20 responded?

21 **A. Sure.**

22 **Q.** I'll just place in front of you -- just
23 so you don't have to take my word, I'll place in
24 front of you Exhibit 365, page -- Bates page 2597.
25 Again, for the record, it's Exhibit 365 at

1 page 2597.

2 This is Liz Neuman. You see her name up
3 there; right?

4 **A. Yes.**

5 **Q.** And this is a Verde Valley Fire District
6 Field Worksheet?

7 **A. Yes.**

8 **Q.** And here it says she has two
9 millimeter -- pinpoint pupils?

10 **A. Yes.**

11 **Q.** See here she's got her pulse at 168 at
12 5:45, 162 at 5:55, and 148 at 1605, and 143 at 1605
13 again.

14 Okay. Now, you ever workout with a heart
15 rate monitor?

16 **A. Yes.**

17 **Q.** Okay. So would you agree with me that a
18 pulse rate of 168, you're pushing it?

19 **A. Yes.**

20 **Q.** That's a fast pulse rate; right?

21 **A. Yes.**

22 **Q.** And that 162 is also a very fast pulse
23 rate?

24 **A. Yes.**

25 **Q.** Now, this is not the kind of person you

1 would conduct CPR on; correct?

2 **A. Well, not at that time, yes.**

3 **Q.** Okay. But this is the time when you
4 arrived, isn't it?

5 **A. Yes.**

6 **Q.** So is it possible, just is it possible --
7 and, again, you know, 17 months or however many
8 months ago, is it possible you're just
9 misremembering somebody getting CPR?

10 **A. Yeah. I think it was -- maybe I just saw**
11 **her being worked on and thought she was one of the**
12 **people getting CPR.**

13 **Q.** Okay. So maybe -- look. Again, it's 17
14 months ago. So I don't want to belabor this. But
15 is it possible that you just didn't actually see
16 somebody getting CPR, thought you were seeing
17 somebody getting CPR and having it misremembered?

18 **A. Yeah. I think it's possible I thought I**
19 **saw somebody getting CPR.**

20 **Q.** Okay. Now, you wrote a report in your
21 case about your involvement in this case?

22 **A. Yes.**

23 **Q.** And we looked at it yesterday?

24 **A. Yes.**

25 **Q.** Right? And this is a report just like

1 the EMTs; right? You got to document that you saw,
2 and they document that they saw?

3 **A. Yes.**

4 **Q.** Now, you had a tape-recording device;
5 correct?

6 **A. Yes.**

7 **Q.** And you -- but it failed to work?

8 **A. Yes.**

9 **Q.** Correct? I think your report says that
10 while it recorded, it did not -- it was not able to
11 transfer the information to the computer.

12 **A. Yeah. The information was lost between**
13 **the recorder and the computer.**

14 **Q.** Okay. Did you get an IT guy to maybe
15 work on it?

16 **A. No.**

17 **Q.** All right. So that's just lost?

18 **A. Yes.**

19 **Q.** Okay. Couple of minor points, and
20 Ms. Polk addressed this a little bit in her direct.
21 You said that you had talked some guy named Jason.

22 **A. Yes.**

23 **Q.** Okay. And that's in your report;
24 correct?

25 **A. Yes.**

1 **Q.** And Jason was a guy who you had -- who
2 had approached you at one point?

3 **A. Yes.**

4 **Q.** And you now know that there is actually
5 nobody there by the name of Jason?

6 **A. Yes.**

7 **Q.** Correct? And is it your belief now that
8 the person is actually a guy named Josh Fredrickson
9 or Josh?

10 **A. Yes.**

11 **Q.** Okay. So is it possible that in your
12 report you got -- you just got the name wrong?

13 **A. Yes.**

14 **Q.** Now, you had mentioned yesterday that
15 Mr. Ray had given you a Nevada address?

16 **A. Yes.**

17 **Q.** Okay. Do you know one way or another
18 whether Mr. Ray has a Nevada address on his
19 driver's license?

20 **A. No.**

21 **Q.** Okay. So you don't know if he actually
22 lives in Nevada or has a residence in Nevada, do
23 you?

24 **A. Well, he told me he lived in Vegas.**

25 **Q.** Okay. So he told you he lived in Vegas.

1 But I guess what I'm asking you is, you don't know
2 one way or another whether he has a driver's
3 license that also lists as his residence Las Vegas?

4 **A. That's correct.**

5 **Q.** Now, you had also mentioned that Mr. Ray
6 said there were some 40 people -- 40 participants
7 in the sweat lodge? Something like that?

8 **A. Yes.**

9 **Q.** Okay. And so let's just do some path.
10 Forty participants. Would you have any reason to
11 doubt that there were four Dream Team members who
12 were inside?

13 **A. No.**

14 **Q.** Okay. That Mr. Ray was inside?

15 **A. No.**

16 **Q.** Okay. So that Mr. Ray was inside. You
17 have no reason to doubt that?

18 **A. No, I don't.**

19 **Q.** In fact, he told you that?

20 **A. Yes.**

21 **Q.** And that there were about four James Ray
22 International employees inside. Do you have any
23 reason to doubt that?

24 **A. No.**

25 **Q.** So if you add that up, it's about almost

1 50, about 49. If you take 40 participants, and you
2 add nine extra people in there, you're about at 49;
3 correct?

4 **A. Yes.**

5 **Q.** Does that math sound right?

6 **A. Yes.**

7 **Q.** Now, you also had an interview with
8 Mr. Ray.

9 **A. Yes.**

10 **Q.** And, again, you had taped this interview,
11 but your tape recorder failed?

12 **A. Yes.**

13 **Q.** And was unable to transfer the data to
14 the computer?

15 **A. Yes.**

16 **Q.** And you didn't call an IT guy to try to
17 rescue anything?

18 **A. No.**

19 **Q.** And you testified that you talked to
20 Mr. Ray first, and then your lieutenant, Jay
21 Parkinson, came and talked to you a few minutes
22 later.

23 **A. Yes.**

24 **Q.** Now -- and I think you had earlier told
25 me that you don't recall whether it was a few

1 minutes. I think you earlier told me that it was
2 like one or two minutes difference.

3 **A. Yes.**

4 **Q.** That, basically, you were standing there,
5 and Lieutenant Parkinson came up in about one or
6 two minutes?

7 **A. Yes.**

8 **Q.** Do you recall it was actually
9 Lieutenant Parkinson who was talking to Mr. Ray
10 first and then you came up?

11 **A. No.**

12 **Q.** I'm going to show you
13 Lieutenant Parkinson's report. If you could just
14 review that line there. About that time
15 Sergeant Barbaro came to our location.

16 Would that refresh your recollection that
17 actually Lieutenant Parkinson was talking to
18 Mr. Ray and then you approached?

19 **A. Well, I think you're taking this out of**
20 **context.**

21 **Q.** Well, I guess I'm just asking you, does
22 it refresh your recollection that you -- that the
23 lieutenant -- so would it refresh your recollection
24 that the lieutenant was talking to Mr. Ray, and
25 then you came up, and then you approached?

1 **A. No. That's not really my recollection.**

2 **I can tell you.**

3 **Q.** I'm just asking if that's your
4 recollection.

5 **A. No.**

6 **Q.** Did you hear Lieutenant Parkinson ask
7 Mr. Ray a number of questions when the two of you
8 were standing next to him?

9 **A. Yes. I overheard a little bit.**

10 **Q.** Including how many people were in the
11 lodge?

12 **A. Yes.**

13 **Q.** And that was, basically, a conversation
14 you had with Mr. Ray together with
15 Lieutenant Parkinson; correct?

16 **A. Actually, I spoke to Mr. Ray first, and**
17 **then Lieutenant Parkinson came up and spoke to him.**

18 **Q.** Okay.

19 **A. And then I left and come back.**

20 **Q.** All right. You were there when
21 Lieutenant Parkinson had a conversation with
22 Mr. Ray about how many people were in the sweat
23 lodge?

24 **A. Yes.**

25 **Q.** And you were there when Mr. Ray explained

1 to Lieutenant Parkinson that he had hosted the
2 lodge once a year and that this is the fourth year
3 of the event? Were you there when he said that?

4 **A. Yes.**

5 **Q.** Okay. So you heard Mr. Ray say he had
6 hosted the sweat lodge event; correct?

7 **A. He had hosted the seminar.**

8 **Q.** Well, I actually had asked you, hosted
9 the sweat lodge once a year, and this is the fourth
10 year of the event.

11 **A. Yes.**

12 **Q.** And you were there when Mr. Ray explained
13 to Lieutenant Parkinson that he had hosted the
14 sweat lodge, and this was the -- he had hosted the
15 lodge once a year, and this is the fourth year for
16 the event?

17 **A. That's in Lieutenant Parkinson report?**

18 **Q.** I'm just asking you. You were there.

19 Did you hear that?

20 **A. No.**

21 **Q.** You did not hear -- you're standing right
22 next to Lieutenant Parkinson, but you did not hear
23 lieutenant -- strike that.

24 You did not hear Mr. Ray say that he had
25 hosted the lodge once a year and that this was the

1 fourth year of the event?

2 **A. Yes. I heard him say that he had hosted**
3 **the event and -- you know -- the sweat lodge was**
4 **part of it.**

5 **Q.** Okay. You were standing there -- you
6 heard the part that he had hosted the event, but
7 you didn't hear him say that he had hosted the
8 lodge once a year, and this is the fourth year of
9 the event?

10 **A. Yes. I heard that conversation.**

11 **Q.** Do you recall one way or another whether
12 you heard Mr. Ray tell both of you, basically --
13 Lieutenant Parkinson and you, standing next to
14 Mr. Ray -- that he had hosted the lodge once a
15 year?

16 Do you recall one way or another?

17 **A. Yes.**

18 **Q.** Okay. And what is your recollection?

19 **A. I recall that he said he hosted the**
20 **event.**

21 **Q.** Okay. So you do not believe that he
22 hosted -- he said that he hosted the lodge once a
23 year?

24 MS. POLK: Your Honor, asked and answered.

25 THE COURT: Overruled.

1 Mr. Li is showing a document.

2 MR. LI: Yes. I'm showing
3 Lieutenant Parkinson's report.

4 THE WITNESS: Yeah. And I agreed with you
5 that Lieutenant Parkinson said that in his report.

6 **Q.** BY MR. LI: That he hosted the lodge?

7 **A. Yes.**

8 **Q.** That's what Lieutenant Parkinson put in
9 his report.

10 And you were standing right next to
11 Lieutenant Parkinson when you were interviewing
12 Mr. Ray; correct?

13 **A. Yes.**

14 **Q.** And the two of you asked questions like
15 how many people were in the lodge?

16 **A. Yes.**

17 **Q.** What do you do for a living? Those sorts
18 of things?

19 **A. Yes.**

20 **Q.** You asked him safety issues about -- you
21 know -- whether there was a source of flame in
22 there?

23 **A. No.**

24 **Q.** Okay. But you did ask who was in charge
25 of this?

1 **A. Yes.**

2 **Q.** And Lieutenant Parkinson, who was
3 standing right next to you, reports that he --
4 Mr. Ray explained that he had hosted the lodge once
5 a year, and this is the fourth year of the event?

6 **A. Yes. That's what Lieutenant Parkinson**
7 **put in his report.**

8 **Q.** Okay. Now, you testified yesterday that
9 Mr. Ray said that he -- that Ted was in charge of
10 the lodge?

11 **A. Yes. That he conducted the sweat lodge.**

12 **Q.** Something like that. Words to that
13 effect; correct?

14 **A. Yes.**

15 **Q.** Is it possible that you two
16 miscommunicated?

17 **A. Well, I know what he told me, and I knew**
18 **what I understood so --**

19 **Q.** So is it possible that you understood
20 something different than what he was saying? That
21 happens, doesn't it?

22 **A. Yes.**

23 **Q.** Okay. Is it possible you thought he was
24 talking about who was hosting the lodge, and he
25 thought you were talking about who tended the fire?

1 Is that possible?

2 **A. Well, based on our other conversation,**
3 **it's not possible.**

4 **Q.** Isn't it possible that people
5 miscommunicate under stress?

6 **A. Yes.**

7 **Q.** And would you agree with me that a scene
8 where a lot of folks have -- where two people have
9 passed away, a lot of folks have gone to the
10 hospital, where there are helicopter flying,
11 ambulances moving around and police officers
12 answering questions, that it's a stressful
13 situation for most people?

14 **A. Well, that's not when that conversation**
15 **took place.**

16 **Q.** You understand -- I'm just talking in
17 general. This is a pretty stressful situation --
18 would you agree with that? -- for everybody that
19 was involved?

20 **A. Yes.**

21 **Q.** Probably including you. It's not a --
22 it's much nicer to be at home watching TV than at a
23 mass-casualty incident; correct?

24 **A. Yes.**

25 **Q.** So it's a stressful situation; right?

1 A. Yes.

2 Q. And is it possible when people are

3 stressed, they miscommunicate?

4 A. Yes.

5 Q. For instance, you got Jason's name wrong?

6 A. Yes.

7 Q. And, for instance, you thought you saw

8 somebody having CPR done.

9 A. But this was at two different times.

10 This was the first, initial response to the scene,

11 and after the scene had calmed down and people had

12 been transported, and now we're just securing.

13 So -- you know -- there was quite a bit of time

14 that went by.

15 Q. But that's for you. I mean, you are a

16 SWAT team member. You are a narcotics officer.

17 You've probably dealt with some pretty tough

18 customers in your day; correct?

19 A. Yes.

20 Q. And -- you know -- you probably, like a

21 lot of folks I know in law enforcement -- you

22 know -- and perhaps a little bit like me, are

23 adrenaline junkies.

24 A. Yes.

25 Q. Okay. So for you -- you know -- that's

1 your moment. And then -- you know -- but for other

2 people it can be extraordinary stressful; correct?

3 A. Yes.

4 Q. That's all I'm saying. Isn't it possible

5 that even somebody as skilled and as used to being

6 as in stressful situations as you, you've gotten

7 things wrong in your report; correct?

8 A. Yes.

9 Q. And you've said things to the jury -- no

10 big deal. But you've said thing to the jury that

11 maybe you didn't actually see, you maybe didn't see

12 CPR. It's possible you were incorrect about that;

13 right?

14 A. Yes.

15 Q. So I'm just asking you, is it possible

16 you guys miscommunicated?

17 A. Yes.

18 Q. Is it possible that you didn't hear

19 Mr. Ray say what Lieutenant Parkinson wrote, which

20 is that he had hosted the sweat lodge for four

21 years?

22 A. Well, we're not talking about the same

23 conversation.

24 Q. I'm just asking, is it possible you

25 didn't hear that Lieutenant Parkinson was talking

1 to Mr. Ray and you just didn't hear, hosted the

2 sweat lodge for four years?

3 A. Yes.

4 Q. Okay. That's all I'm asking. I'm not --

5 I'm not -- you know -- I'm not saying that you're

6 trying to mislead anybody. I'm just saying is it

7 possible that you misheard some things?

8 A. Yes.

9 Q. And is it possible that you've

10 misreclected a few things?

11 A. It's not possible. I know what Mr. Ray

12 told me --

13 Q. Understood.

14 A. -- about who was conducting the sweat

15 lodge.

16 Q. Understood. And I'm not --

17 A. And that was at a totally different time

18 during this incident.

19 THE COURT: Sergeant, we'll have a question

20 and answer. And, again, if you can't answer a

21 question yes or no, you can say that if you're not

22 able to do it. Otherwise, answer yes or no if you

23 can.

24 Okay? Thank you.

25 THE WITNESS: Okay.

1 Q. BY MR. LI: I'm not trying to jam words

2 in your mouth. I'm just asking is it possible you

3 guys miscommunicated?

4 A. I don't understand how you want me to

5 answer that. I know what I said to him. I know

6 what he said to me. I know how I perceived it.

7 Q. But you don't know how he perceived it?

8 A. That's correct.

9 Q. Okay. That's all I'm saying. You don't

10 know what everybody else is thinking when you're

11 talking to them; right.

12 A. Yes.

13 Q. And you don't know what everybody else is

14 thinking when they're under stress, do you?

15 A. That's correct.

16 Q. And people miscommunicate when they're

17 under stress; correct?

18 A. Yes.

19 Q. I mean, that's probably why when you're

20 on a SWAT team your signals need to be really

21 clear; right?

22 A. Yes.

23 Q. You don't want to have complicated lawyer

24 questions when you're talking to somebody about to

25 go through the door; correct?

1 A. Correct.

2 Q. Okay. So when people are under stress,
3 you want to keep it simple because people can
4 miscommunicate; right?

5 A. That's correct.

6 Q. And in your line of work, that can have
7 some very serious consequences?

8 A. Yes.

9 Q. So And I'm just asking. And I'll stop
10 and I'll move on. It's possible that people
11 miscommunicate under stress; right?

12 A. Yes.

13 Q. And unfortunately you don't have the
14 tape-recording that would clear up whatever
15 conversation took place between the three of you;
16 correct?

17 A. Yes.

18 Q. Now, you had discussed with this jury
19 that you ruled out organophosphates -- strike that.
20 That you had ruled out carbon monoxide
21 poisoning by looking at some of the patients;
22 correct?

23 A. Yes.

24 Q. Because they weren't -- they weren't that
25 deep, cherry-red color that sometimes people who

1 have suffered from carbon monoxide --

2 A. Yeah. I wouldn't say ruled out. It was
3 just one of the things that we needed to look at
4 it.

5 Q. And when you saw them, they weren't
6 bright red, so you assumed that they probably
7 weren't -- had not suffered a toxic dose of carbon
8 monoxide; right?

9 A. Yes.

10 Q. And you didn't look at their medical
11 records, though, did you?

12 A. No. Like I said, I was a first
13 responder.

14 Q. And, in fact, you know just like with the
15 DPS lab, the way to find out whether somebody has
16 been poisoned with carbon monoxide is to do lab
17 test and what have you; correct?

18 A. Yes.

19 Q. Just like if you need to figure out what
20 the chemical composition of a pile of powder is;
21 correct?

22 A. Yes.

23 Q. And So you would trust the lab reports
24 more than just your observation; correct?

25 A. Yes.

1 Q. And you don't know one way or another, do
2 you, whether or not any of these folks had been
3 exposed to insecticides?

4 A. That's correct.

5 Q. And you don't know one way or another
6 whether they had been lying face down in the dirt
7 breathing in insecticides for two hours in a hot
8 and moist atmosphere, do you?

9 A. No.

10 Q. The only way you would know something
11 like that is if you conducted a blood test on them
12 and found whether or not there was some sort of
13 poison in their system; correct?

14 A. Yes.

15 Q. Or if you had an adequate sample of the
16 ground that they were actually on and you tested
17 it, just like you might test a crime lab -- you
18 know -- a meth lab chemical pile to figure out
19 whether there was that poison in the dirt; right?

20 A. Yeah. Within the limitations of the
21 lab -- you know -- whatever preferred method, stuff
22 is to sample.

23 Q. Of course. Within the limitations of the
24 lab, but you, as an investigator, would collect the
25 soils, do the blood test and figure out whether or

1 not these folks had been exposed to some sort of
2 toxin; right?

3 A. Yes.

4 Q. Thank you, Sergeant.

5 THE COURT: Thank you, Mr. Li.

6 Ms. Polk.

7 MS. POLK: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. POLK:

10 Q. Good morning, Sergeant.

11 A. Good morning.

12 Q. You were asked some questions about what
13 you saw at the scene in terms of first responders
14 working on people who were down. Are you able to
15 recall today how many people were down when you
16 arrived at the scene?

17 A. No.

18 Q. And do you recall how many emergency
19 responder vehicles had left the area as you were
20 entering?

21 A. Yeah. When I -- when I got there, one or
22 two were leaving, and there were still a bunch of
23 paramedics and a bunch of people being helped.

24 Q. And you arrived at what time?

25 A. 6:10.

1 Q. 6:10. I'm going to show you Exhibit 222,
2 which has been admitted into evidence. This is the
3 medical records for a woman named Sidney Spencer.
4 And, first of all, do you see the time? Says time
5 to initial arrival at triage?

6 A. Yes.

7 Q. What does that say?

8 A. 1955, which is 7:55 p.m.

9 Q. And this is with respect to someone named
10 Sidney Spencer. And this would be her arrival at
11 Flagstaff Medical Center?

12 A. Yes.

13 Q. How much after your arrival at the scene
14 would 7:55 be?

15 A. Over an hour, an hour and 40 minutes.

16 Q. Is it possible that Ms. Spencer was at
17 the scene when you were at the scene?

18 A. Yes.

19 Q. And then I'm going to draw your attention
20 to the history of present illness. Do you see the
21 line where it says, she was intubated at the scene
22 apparently using various drugs?

23 Do you know what it means for someone to
24 be intubated?

25 A. Yes.

1 Q. And were you aware of whether anybody was
2 being intubated at the scene when you were there?

3 A. No.

4 Q. What are you aware of in terms of
5 paramedics working on patients after you had
6 arrived at the scene?

7 A. Just there were paramedics giving people
8 oxygen. There were paramedics hovering over
9 people, doing stuff to them. So there is a bunch
10 of work being done on people.

11 Q. And I'm going to put up on the overhead
12 Exhibit 230. And I understand this is a photograph
13 taken before you arrived at the scene. I believe
14 that was your testimony?

15 A. Yes.

16 Q. Does this photograph, however, show you
17 the area where you saw somebody -- what you
18 believed was to be CPR -- someone receiving CPR?

19 A. Yes.

20 Q. And show the jury where that is.

21 And when you arrived, Sergeant, do you
22 know whether or not this patient had been taken
23 away? Or was that patient still at the scene?

24 A. I believe that patient was still at the
25 scene when I arrived.

1 MR. LI: Objection. Lack of foundation.

2 How would the sergeant know Mr. Ray is
3 actually in the photograph?

4 THE COURT: Sustained.

5 Q. BY MS. POLK: Was that patient that you
6 saw the paramedics working on male or female?

7 A. I believe it was a female.

8 Q. Do you recall, Sergeant, whether or not
9 that patient -- do you recall the position that the
10 patient was in?

11 A. Lying on the back.

12 Q. On her back?

13 A. Yes.

14 Q. When you arrived at the scene, would you
15 agree that there was confusion at the scene?

16 A. Yes.

17 Q. And how so?

18 A. Just people were moving around. Medics
19 were going to different people. There was one
20 lady -- some participants were taking care of other
21 participants. Some Dream Team members were walking
22 other participants back up to the lodging area. It
23 was all kinds of activity, you know.

24 And then there was -- it was so much
25 chaos that the EMTs had to jump from person to

1 person. Everybody was just trying to help
2 everybody out. And so it was just nuts.

3 Q. Do you recall, Sergeant, with respect to
4 the people who were being worked on, assisted
5 either by paramedics or by other participants or
6 Dream Team members -- do you recall what position
7 that the people being worked on were in?

8 A. Some were lying on their back. Some were
9 sitting up. Some were lying on their sides.

10 Q. You were asked a question by Mr. Li about
11 the lab reports that come from the DPS crime lab
12 and what role they play in your decision to arrest
13 somebody.

14 What is the timing in terms of a drug
15 scene that you might be working and the time that
16 you send drugs off to the lab and your decision
17 whether or not to arrest somebody?

18 A. The lab is so backlogged, it takes months
19 just to test it. If they could test it when you
20 immediately brought it over, it would take a week.
21 So we don't arrest based on lab reports. We arrest
22 based on field test, knowledge, experience and
23 other things.

24 Q. You were asked about the person who
25 approached you. And you recalled that his name was

1 Jason. You were asked whether or not you could
2 have gotten that person's name wrong.

3 Do you recall that question?

4 **A. Yes.**

5 **Q.** Is it possible that that person gave you
6 a false name?

7 MR. LI: Objection, Your Honor.

8 Argumentative.

9 THE COURT: Overruled.

10 You can answer that.

11 THE WITNESS: It's possible.

12 **Q.** BY MS. POLK: With respect to the
13 conversation you had with Mr. Ray, what did you ask
14 him -- when he told you he lived in Las Vegas, what
15 was the question you had posed to him?

16 **A. Where do you live?**

17 **Q.** And when you asked him how many people
18 were in the sweat lodge, what was the question you
19 posed to him?

20 **A. How many people were in the sweat lodge?**

21 **Q.** And what was his answer?

22 **A. Forty.**

23 **Q.** Mr. Li asked you, well, did you know
24 there were staff -- Mr. Ray's staff in the sweat
25 lodge and that could be nine people. Did Mr. Ray

1 ever offer you that information to you?

2 **A. No.**

3 **Q.** What was the total number of people he
4 told you were in the sweat lodge?

5 **A. Forty.**

6 MR. LI: Objection. Asked and answered but
7 also adding the total. They could have
8 miscommunicated, Your Honor.

9 THE COURT: Overruled.

10 **Q.** BY MS. POLK: Would you explain to the
11 jury the couple of times you said, I can explain --
12 first of all, did you have more than one -- were
13 you present for more than one conversation with the
14 defendant?

15 **A. Yes.**

16 **Q.** And for the first conversation that you
17 had with the defendant, where were you?

18 **A. Standing by the road that came down from
19 the lodging area.**

20 **Q.** Do you see the defendant in the picture
21 up on the overhead?

22 **A. Yes. Because -- I can identify him
23 because I was told he was there.**

24 **Q.** How much time, Sergeant, had passed from
25 the time that you arrived to the time that you had

1 your first conversation or you were present for the
2 conversation with the defendant?

3 **A. Approximately 40 minutes.**

4 **Q.** Forty minutes. And prior to those 40
5 minutes, was Mr. Ray, the defendant, at the scene
6 where you were?

7 **A. I didn't see him.**

8 **Q.** And when you saw him, how was he dressed?

9 **A. He was wearing, like, a tracksuit.**

10 **Q.** A tracksuit. What was his demeanor
11 during the conversation you had with him?

12 **A. Normal.**

13 **Q.** What do you mean by "normal"?

14 **A. We just had a normal conversation.**

15 **Q.** Mr. Li asked you questions about isn't it
16 possible somebody is stressed in that situation,
17 the confusion, et cetera. What is your observation
18 about Mr. Ray in that situation?

19 MR. LI: Calls for speculation, Your Honor.

20 THE COURT: Just in terms of observation,
21 overruled.

22 THE WITNESS: He was calm.

23 **Q.** BY MS. POLK: Was anybody else present
24 for that first conversation?

25 **A. Not that I recall. There might have been**

1 **some people standing around but not that I recall.**

2 **Q.** How was it that Lieutenant Parkinson
3 joined the conversation?

4 **A. When he arrived, I told him what was
5 going on. He wanted to talk to Mr. Ray.**

6 **Q.** And how much time had passed since you
7 had had the conversation -- between the time you
8 had your conversation with the defendant and
9 Lieutenant Parkinson had a conversation?

10 **A. A few minutes.**

11 **Q.** As in how many minutes, would you say?

12 **A. Maybe three or four.**

13 **Q.** Did Lieutenant Parkinson arrive at the
14 scene after your first conversation with the
15 defendant?

16 **A. I don't know exactly when he got there
17 but -- I don't know if he had arrived and had been
18 walking round talking to people when I talked to
19 Mr. Ray.**

20 **Q.** Would you tell the jury why you asked the
21 question about who was conducting the sweat lodge.

22 MR. LI: Object, Your Honor. Relevance.

23 THE COURT: Overruled.

24 THE WITNESS: I wanted to find out who was
25 actually inside controlling the sweat lodge,

1 pouring the water on the rocks, doing that thing.
2 **Q.** BY MS. POLK: And how is it that you know
3 that there -- that part of a sweat lodge ceremony
4 involves somebody inside controlling it and pouring
5 water on the rocks?

6 **A.** **Well, because I'd been to a sweat lodge**
7 **ceremony.**

8 **Q.** And what was the question you asked of
9 Mr. Ray?

10 **A.** **Who was conducting the ceremony.**

11 **Q.** And what was Mr. Ray's answer?

12 **A.** **He said it was Ted.**

13 **Q.** And you were asked by Mr. Li, is it
14 possible that -- that the defendant misunderstood
15 you? Is that possible?

16 **A.** **I suppose.**

17 **Q.** In your mind, were you -- not in your
18 mind. Were you clear when you asked the question
19 of Mr. Ray?

20 **A.** **Yes.**

21 **Q.** And how clear were you?

22 MR. LI: Objection, Your Honor.

23 THE COURT: Sustained.

24 **Q.** BY MS. POLK: How is it possible that
25 Mr. Ray would have misunderstood your question?

1 MR. LI: Objection. Calls for speculation.

2 THE COURT: Sustained.

3 **Q.** BY MS. POLK: What did Mr. Ray say when
4 you asked who was conducting the sweat lodge?

5 MR. LI: Asked and answered.

6 THE COURT: Overruled.

7 You may answer that, Sergeant.

8 THE WITNESS: He said it was Ted.

9 **Q.** BY MS. POLK: And had you heard of Ted
10 before?

11 **A.** **No.**

12 **Q.** Had anybody at the scene mentioned Ted to
13 you?

14 **A.** **No.**

15 **Q.** Before you asked Mr. Ray who was
16 conducting the sweat lodge, had you asked Mr. Ray
17 any questions about who was tending the fire?

18 **A.** **No.**

19 **Q.** Had you asked Mr. Ray any questions about
20 the rocks or how the rocks got in the sweat lodge?

21 **A.** **No.**

22 **Q.** With regard to your training and
23 experience, how many crime scenes have you been to?

24 **A.** **A bunch. I've been to all types --**
25 **homicides, suicides, decomposed people, dismembered**

1 **people, child abuse. I've probably gone to**
2 **hundreds of them in my career.**

3 **Q.** And how many interviews have you done of
4 suspects or witnesses?

5 MR. LI: Objection, Your Honor. Relevance.

6 THE COURT: Overruled.

7 You may answer that, if you can.

8 THE WITNESS: Hundreds.

9 **Q.** BY MS. POLK: Mr. Li asked you questions
10 about people being stressed in situations such as
11 what you encountered at Angel Valley.

12 Were you stressed?

13 **A.** **Yes.**

14 **Q.** And why?

15 **A.** **Well, I mean, this is just -- this was**
16 **probably -- this is one of the only scenes that I**
17 **remember going to. I've thought about it a lot.**
18 **It was just mass chaos. You know, it was a**
19 **mass-casualty thing. There were people all over**
20 **the place.**

21 **It really took a lot of effort on my part**
22 **to try to focus everything, get all my guys doing**
23 **what they were supposed to do at the initial scene.**

24 **Q.** By the time you had the conversation with
25 the defendant, were you focused?

1 **A.** **Yes.**

2 **Q.** And was your mind clear?

3 **A.** **Yes.**

4 **Q.** Were you clear on what it was you were
5 asking the defendant when you asked him who
6 conducted the sweat lodge?

7 **A.** **Yes.**

8 **Q.** And was his answer clear to you?

9 **A.** **Yes.**

10 **Q.** There was a second conversation, then,
11 between Lieutenant Parkinson and Mr. Ray.

12 **A.** **Yes.**

13 **Q.** And were you present for that?

14 **A.** **For part of it, yes.**

15 **Q.** For how many minutes were you present?

16 **A.** **Just a few.**

17 **Q.** And did it take place -- where did it
18 take place?

19 **A.** **Around the same area.**

20 **Q.** What was the defendant's demeanor during
21 that conversation?

22 **A.** **He was fine.**

23 **Q.** Do you recall hearing
24 Lieutenant Parkinson ask the defendant a question
25 about who was conducting the sweat lodge?

1 **A. I thought Lieutenant Parkinson was**
2 **talking about who was doing the event.**

3 **Q.** And that's what I want you to tell the
4 jury. What did you hear Lieutenant Parkinson ask
5 the defendant?

6 **A. I don't really recall. But they were**
7 **having some type of conversation about who is in**
8 **charge of, and I thought he was talking about**
9 **conducting the event.**

10 **Q.** Had you ever asked anybody who was in
11 charge?

12 **A. No.**

13 **Q.** And when you first had arrived at the
14 scene, did you know who was in charge?

15 **A. No.**

16 **Q.** Did you ever ask any other participant
17 who was in charge?

18 **A. No.**

19 **Q.** And do you recall, then, what
20 Lieutenant Parkinson said to the defendant while
21 you were present about who was in charge?

22 **A. Yes.**

23 **Q.** And what do you recall?

24 **A. And I believe that Mr. Ray was in charge**
25 **of the event.**

1 **Q.** "The event" meaning what?

2 **MR. LI:** Objection, Your Honor. Calls for
3 speculation.

4 **THE COURT:** Sustained.

5 **Q.** BY MS. POLK: Were any more words said
6 about the event?

7 **A. No.**

8 **Q.** Between your first conversation with the
9 defendant and the conversation that

10 Lieutenant Parkinson had with the defendant, did
11 you have a conversation with Lieutenant Parkinson?

12 **A. Yes.**

13 **Q.** And where did that conversation take
14 place?

15 **A. I think while we were walking in the area**
16 **where we parked the patrol cars and the EMS**
17 **vehicles.**

18 **Q.** Do you recall what -- did you brief
19 Lieutenant Parkinson at that time?

20 **A. Yeah. I just kind of told him what was**
21 **going on. And I told him we needed to follow up**
22 **with whoever is at the hospital, find out what was**
23 **going on with the people there. He had me text one**
24 **of the detectives right where we were talking.**
25 **Couldn't get out on cell phone so I sent a text and**

1 **started getting criminal investigations to respond.**

2 **Q.** Did you tell Parkinson what you had
3 learned from the man who identified himself as
4 Jason?

5 **MR. LI:** Objection. Beyond the scope, calls
6 for hearsay.

7 **THE COURT:** Sustained.

8 **Q.** BY MS. POLK: Did you have a conversation
9 with Lieutenant Parkinson about what you had
10 learned from the defendant?

11 **A. Yes.**

12 **Q.** And what did you tell
13 Lieutenant Parkinson?

14 **MR. LI:** Objection. Calls for hearsay, also
15 relevance.

16 **THE COURT:** Sustained.

17 **MS. POLK:** Your Honor, this goes to the issue
18 of the second conversation.

19 **MR. LI:** The only issue is whether they
20 miscommunicated.

21 **THE COURT:** Speaking objections and responses.
22 The way it's being presented, it would relay
23 hearsay. Sustained.

24 **MS. POLK:** Your Honor, I'm asking what this
25 witness said to Lieutenant Parkinson, not what

1 Lieutenant Parkinson said to him.

2 **THE COURT:** Overruled.

3 You may answer that.

4 **Q.** BY MS. POLK: Do you recall the question?

5 **A. No.**

6 **Q.** What did you tell Lieutenant Parkinson
7 between -- before Lieutenant Parkinson talked to
8 the defendant?

9 **A. That, basically, that this guy, James**
10 **Ray, was doing this seminar thing here, and during**
11 **the sweat lodge the people got -- you know -- air**
12 **evaced and stuff. And I told him that -- just kind**
13 **of generally gave him an overview of what was going**
14 **on.**

15 **Q.** You provided him with the name of James
16 Ray at that time?

17 **A. Yes.**

18 **Q.** And specifically what did you tell him
19 about what James Ray was doing?

20 **MR. LI:** Objection. Asked and answered.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** That he was running this event.

23 **Q.** BY MS. POLK: Thank you, Sergeant.

24 Thank you, Your Honor.

25 **THE COURT:** Thank you, Ms. Polk.

1 Are there any questions from the jury,
 2 Ms. Rybar?
 3 THE BAILIFF: No.
 4 THE COURT: Then may Sergeant Barbaro be
 5 excused as a witness, Ms. Polk?
 6 MS. POLK: Your Honor, the state would request
 7 he remain subject to recall.
 8 THE COURT: You're excused temporarily anyway,
 9 but you may be recalled. So remember the rule of
 10 exclusion continues to apply throughout the trial.
 11 You're temporarily excused at this time.
 12 Ms. Polk.
 13 MS. POLK: Your Honor, would you like me to
 14 call the next witness or would you like --
 15 THE COURT: We can go ahead -- have to have
 16 one recess in the morning. Let's go ahead and take
 17 the morning recess, ladies and gentlemen. Remember
 18 the admonition and please be back at 20 till. So
 19 about 20 minutes.
 20 Thank you.
 21 (Recess.)
 22 THE COURT: The record will show the presence
 23 of the defendant, Mr. Ray, represented by
 24 Mr. Kelly, Mr. Li. Ms. Polk and Mr. Hughes
 25 represent the state. The jury is present.

1 MS. POLK: Your Honor, the state calls Sara
 2 Mercer.
 3 THE COURT: Ma'am, if you'd step where the
 4 bailiff is directing you. And then raise your right
 5 hand to be sworn by the clerk.
 6 SARA M. MERCER,
 7 having been first duly sworn upon her oath to tell
 8 the truth, the whole truth, and nothing but the
 9 truth, testified as follows:
 10 THE COURT: Please be seated to my right.
 11 Please begin by stating and spelling your full
 12 name.
 13 THE WITNESS: Sara Marie Mercer, S-a-r-a,
 14 M-a-r-i-e, M-e-r-c-e-r.
 15 THE COURT: Thank you.
 16 Ms. Polk.
 17 DIRECT EXAMINATION
 18 BY MS. POLK:
 19 Q. Good morning, Sara. Start by telling the
 20 jury how old you are.
 21 A. I'm 19.
 22 Q. I'm afraid you're are going to have to
 23 pull the mic a little closer so we can hear you.
 24 You're 19?
 25 A. Yes. 19.

1 Q. And who are your parents?
 2 A. **Ted and Debby Mercer.**
 3 Q. Do you have any brothers and sisters?
 4 A. **I have one brother.**
 5 Q. Sara, in October of 2009, how old were
 6 you?
 7 A. **Seventeen.**
 8 Q. And at that time were you living with
 9 your parents?
 10 A. **Yes.**
 11 Q. Where were you living?
 12 A. **Angel Valley.**
 13 Q. And on October 8th of 2009, were you
 14 present at Angel Valley for the event put on by
 15 James Ray International?
 16 A. **I was there on and off, not the whole**
 17 **time.**
 18 Q. Do you know a man named James Ray?
 19 A. **Yes.**
 20 Q. Do you recall when you first met James
 21 Ray or came to know who he is?
 22 A. **I've heard about him, but I don't**
 23 **remember the first time I actually met him.**
 24 Q. On October 8 of 2009, you said you were
 25 there on and off. Do you recall the morning of

1 October 8th?
 2 A. **No.**
 3 Q. Were you away from Angel Valley at any
 4 time during the day of October 8th?
 5 A. **Of 2008?**
 6 Q. I'm sorry. 2009.
 7 A. **2009. I don't remember. I don't recall**
 8 **exactly what I was doing that morning.**
 9 Q. At some point did you go down to the area
 10 where a sweat lodge was?
 11 A. **Yes.**
 12 Q. And you had seen that sweat lodge before?
 13 A. **Yes.**
 14 Q. On how many occasions?
 15 A. **I passed by it nearly every day.**
 16 Q. When you got down to the scene of the
 17 sweat lodge, do you recall what was happening?
 18 A. **I was there once, and my dad was**
 19 **preparing the fire and putting the rocks in there**
 20 **and all that kind of stuff. And I was just kind of**
 21 **there getting the stuff set up like water and the**
 22 **electrolytes and stuff like that.**
 23 Q. So you had some jobs there getting the
 24 sweat lodge ready?
 25 A. **Yes. Not the sweat lodge itself, but the**

1 **water -- I'd put -- put some cups up and filled**
 2 **some water up for people.**

3 **Q.** I'm going to put up on the overhead
 4 Exhibit 145. Does that look familiar to you?

5 **A. Yes.**

6 **Q.** Who do you recognize in that photograph?

7 **A. I see my mom kneeling down.**

8 **Q.** You can draw right on that screen. If
 9 you can just draw a line right under your mom's
 10 feet.

11 **A. That looks like my dad over here, but I'm**
 12 **not completely sure.**

13 **Q.** Sara, you talked about getting some
 14 electrolytes and things down to the scene. Were
 15 you helping anybody in particular to do that?

16 **A. I don't remember who it was. Not**
 17 **exactly. But there were other people out there**
 18 **doing it. Like, I think the Dream Team members was**
 19 **there helping and people like that.**

20 **Q.** Do you know someone named Fawn Foster?

21 **A. Yes.**

22 **Q.** Was she there?

23 **A. Yes.**

24 **Q.** Were you helping her?

25 **A. Yes.**

1 **Q.** Who is it that gave you actual jobs to
 2 do?

3 **A. I just kind of went around and asked what**
 4 **I could do. So I didn't really have any specific**
 5 **jobs. I just found jobs to do.**

6 **Q.** Did you ever see, Sara, the participants
 7 for Mr. Ray's sweat lodge ceremony before they went
 8 in?

9 **A. Yes.**

10 **Q.** At the scene itself?

11 **A. Yes.**

12 **Q.** And what do you recall seeing?

13 **A. Before they did, like, a little ceremony**
 14 **beforehand. They all got in a circle, held hands,**
 15 **talked, and did a little speech. Or James did a**
 16 **little speech. And they all -- just holding hands.**
 17 **That was about it.**

18 **And they did a little -- not really a**
 19 **prayer. But they said something before they went**
 20 **in, and they all lined in after that.**

21 **Q.** You said "James." Who do you mean?

22 **A. James Ray.**

23 **Q.** Where were you when the participants
 24 gathered in a circle and did a little prayer and
 25 James Ray said something?

1 **A. I was just standing off to the side**
 2 **listening and watching.**

3 **Q.** Before the participants went in the sweat
 4 lodge, did anybody ever tell you specifically what
 5 to do?

6 **A. No.**

7 **Q.** What do you recall, Sara, was present at
 8 the scene in terms of things to help take care of
 9 participants?

10 **A. What was that?**

11 **Q.** What sorts of things do you recall seeing
 12 in the area of the sweat lodge to help take care of
 13 the participants? You mentioned electrolytes.
 14 What else do you remember?

15 **A. Water and towels and buckets of water and**
 16 **stuff like that. I think there is, like, oranges**
 17 **and some kind of fruit in a little bowl up there on**
 18 **the table.**

19 **Q.** Do you recall whether there was any first
 20 aid, like a first-aid kit?

21 **A. I don't remember seeing a first-aid kit.**

22 **Q.** And how about something like a
 23 walkie-talkie?

24 **A. I -- I don't remember exactly.**

25 **Q.** Did you -- in this photograph that's on

1 the overhead, we can see some buckets. Can you
 2 tell the jury what those were for.

3 **A. We would fill them up with water, and**
 4 **then they would pour them on the rocks that was**
 5 **inside the pit to create steam.**

6 **Q.** And you say, we would fill it up with
 7 water. Who is "we"?

8 **A. Me and my mom.**

9 **Q.** How did you fill up those buckets with
 10 water?

11 **A. There is a hose right over here**
 12 **somewhere. And we just filled the buckets up with**
 13 **water from the hose.**

14 **Q.** How did the bucket filled with water then
 15 get inside the sweat lodge?

16 **A. We would hand it in.**

17 **Q.** Do you recall how many times you filled
 18 those buckets?

19 **A. No. A lot.**

20 **Q.** And do you remember how many times you
 21 handed in buckets filled with water?

22 **A. Anytime the door came up and they put**
 23 **rocks in, we would pour water. We would pass the**
 24 **buckets of water in, and they would pour it on and**
 25 **pass empty buckets back out.**

1 Q. Once the -- once Mr. Ray started the
2 sweat lodge ceremony, where did you go?

3 A. I stayed outside of the sweat lodge just
4 to help as needed and just kind of waited around
5 the first couple rounds. There wasn't too much
6 going on. I was just right outside.

7 Q. And did you have a particular position
8 that you stayed at when you were outside?

9 A. No. I wandered around a little bit.
10 When the door was about to open, I'd go over by the
11 door and help people come out and help bring the
12 rocks and buckets in and help brush the rocks
13 off -- brush the ashes off the rocks sometimes.

14 Q. Do you know, Sara -- do you see on this
15 photograph where it was that you would help brush
16 ashes off the rock?

17 A. Right over here.

18 Q. Are you looking at this structure right
19 there?

20 A. Yeah.

21 Q. What is that?

22 A. It was just like -- it was some logs or
23 something. And we just put the -- my dad had a --
24 like a rake. And he'd get the rocks up on the
25 rake. And then I'd go over there and brush off the

1 ashes. And he'd bring it over and hand it in and
2 put the rocks into the pit.

3 Q. I'm going to put up on the overhead
4 Exhibit 319 and ask if you recognize this.

5 A. Yes.

6 Q. What do you recognize that to be?

7 A. The door of the sweat lodge.

8 Q. Did you ever take a position near that
9 door?

10 A. Yes.

11 Q. And when did you take a position near
12 that door?

13 A. I was there anytime the door was open.
14 And I would just help people come in and out. And
15 after the people had come in and out, I would stay
16 there. And I remember a few times I had a
17 conversation with James Ray. And I had my hand on
18 his head for a majority of the time when the door
19 was actually open.

20 Q. And just -- do you recall how many rounds
21 there were?

22 A. No.

23 Q. Do you recall, Sara, how long that door
24 would be open between rounds?

25 A. Five to 10 minutes.

1 Q. And can you draw a line on here to show
2 where it was that you saw James Ray?

3 A. James Ray was on this side.

4 Q. And did that position ever change from
5 Mr. Ray?

6 A. No.

7 Q. Do you know who was on this side of the
8 door?

9 A. I don't recall his name, but I interacted
10 with him as well.

11 Q. And how did you in interact with him?

12 A. The same. I had my hand on his head and
13 then had a little conversations with him. Not
14 much. Just kind of just being there for support.

15 Q. What position was James Ray in when you
16 would see him when the door was open?

17 A. He was either sitting up, like, leaning
18 against the back of the sweat lodge or he was
19 laying down.

20 Q. And when you saw James Ray laying down,
21 where was his head?

22 A. Halfway out of the door.

23 Q. If you can show maybe on this picture for
24 the jury what you mean.

25 A. Like, he would be laying here, and his

1 head -- he would be -- have his head as close to
2 the outside as possible.

3 Q. And that was when the door was open?

4 A. Yes.

5 Q. Sara, you said that you interacted with
6 Mr. Ray. Can you explain that to the jury.

7 A. We would -- he would -- when the door
8 would open, I'd put my hand on his head. I recall
9 a couple of times him saying how beautiful I was
10 and that I was such an angel. He was thanking me
11 for being there for him.

12 And one time I remember that he actually
13 spit on my mom's hand, and he apologized intensely.
14 He kept saying, I'm so sorry. I didn't mean to do
15 that. Just said three or four times just how sorry
16 he was for spitting on her hand.

17 Q. You said you had your hand on James Ray's
18 head. Why did you do that?

19 A. Just for support. Letting him know and
20 the other people that were in there that there was
21 help. Just for support.

22 Q. Did you learn to do that from someone
23 else?

24 A. No. Just kind of something I did.

25 Q. And did you also put your hand on the man

1 who was over here?

2 **A. Yes.**

3 **Q.** And did you also have conversations with
4 that man?

5 **A. Yes.**

6 **Q.** Did you observe Mr. Ray's condition,
7 then, throughout the ceremony from your position in
8 that interaction you had with him?

9 **A. Yes.**

10 **Q.** And can you tell the jury what you
11 observed.

12 **A. He was talking throughout the whole sweat
13 lodge. Every round he would be saying something.
14 And when the door was closed, I heard him chanting
15 or singing or saying some kind of something. And
16 then when the door was open, he would talk to me.**

17 **And then the other people out there, he
18 would kind of interact a little bit and help bring
19 the rocks into the pit. I don't know exactly who
20 put the rocks in the pit after we handed it in.
21 But.**

22 **Q.** Who was it, Sara, who would physically
23 pull down this gate to get the door closed?

24 **A. It was my mom and I.**

25 **Q.** And what would cause you to do that?

1 **A. He would tell us to close the gate after
2 we put so many rocks in. He would specify how many
3 rocks -- grandfathers -- that's what they were
4 called. But the rocks, the lava rocks.**

5 **He would tell us how many to bring in for
6 the round. And after we got all the rocks in and
7 poured the water on the rocks, we would lower the
8 door.**

9 **Q.** And when you say he would tell you to
10 close it or lower it, who is "he"?

11 **A. James Ray.**

12 **Q.** How can you did you know, Sara, when to
13 open the gate between rounds?

14 **A. He would tell us when to open it.**

15 **Q.** He being?

16 **A. James Ray.**

17 **Q.** Do you know how long the various rounds
18 were for this ceremony?

19 **A. I can't remember exactly.**

20 **Q.** Do you have a sense of how long the total
21 ceremony was?

22 **A. About two -- two, three hours.**

23 **Q.** You said that when -- that when the gate
24 was open, you had conversations with Mr. Ray. Did
25 you ever have trouble hearing him talk?

1 **A. No.**

2 **Q.** And then you said when the gate was
3 closed, you could also hear Mr. Ray saying some
4 things or chanting. Did you ever have trouble,
5 then, hearing him speak?

6 **A. No.**

7 **Q.** While the gate was opened, did you ever
8 hear Mr. Ray say anything to participants who were
9 leaving?

10 **A. I don't remember exactly. But he would
11 encourage people not to leave. And he made it
12 really -- he would really stress the point to only
13 leave when the gate was open. And even if you were
14 to leave, he would not really give them crap about
15 it, but a little bit he would.**

16 **Q.** And what do you mean he would give them a
17 little bit of crap?

18 **A. Like, I don't know how to word it
19 exactly. But he would just kind of stress the
20 point that this is what you're here for and you
21 should be in here and staying in the sweat lodge.
22 I remember him stating that you are -- you are more
23 than your body. You're your mind or something like
24 that.**

25 **Q.** Did you help people come out of the sweat

1 lodge during the ceremony?

2 **A. Yes.**

3 **Q.** Do you recall about how many people you
4 helped come out?

5 **A. Anybody who came out really. Whoever
6 came out, they were usually crawling or had to be
7 dragged out. No one really just came out and stood
8 up and started walking away. Anybody who came out
9 needed help.**

10 **Q.** And how was it that you helped them?

11 **A. I would help them either walk or pull
12 them over to the tarps that we had laid down and
13 get them water and towels and do anything I could
14 to make them comfortable.**

15 **Q.** Did you notice whether anybody was using
16 water to cool off people that were brought out
17 during the ceremony?

18 **A. Yes. We would sometimes hose the person
19 off if they were too hot or pour water on them.
20 We'd give them cups. Sometimes they'd just pour it
21 right on themselves. We used a lot of water.**

22 **Q.** Did you stay at -- once the ceremony
23 began, did you stay down there the whole time?

24 **A. Yes.**

25 **Q.** Sara, if you remember, you talked about

1 people needing help out, crawling or you assisted
2 them out. Do you recall where Mr. Ray was when you
3 helped people get them out of the door?

4 **A. He was sitting or laying right there**
5 **where he had been the whole time.**

6 **Q.** At some point toward the end of the
7 ceremony, did you hear somebody express concern
8 about some participants?

9 **A. Yes.**

10 **Q.** Will you tell the jury what you remember
11 hearing.

12 **A. I don't know who it was exactly, but I**
13 **remember hearing somebody from the inside saying**
14 **that there were a few people unconscious. And I**
15 **remember James Ray saying something about that**
16 **being a good thing. And they asked if we should do**
17 **anything or take them out. And he said, no. There**
18 **is one more round left. They'll be okay.**

19 **Q.** Where were you when you heard that
20 conversation?

21 **A. Right outside the door at the sweat**
22 **lodge.**

23 **Q.** When you heard Mr. Ray speak, where did
24 you hear his voice coming from?

25 **A. The same spot he had been the whole time.**

1 **Q.** When you heard that, Sara, did you --
2 what did you do?

3 **A. There was nothing I could do. I just**
4 **listened. I was kind of confused, but I couldn't**
5 **really do anything.**

6 **Q.** And why were you confused?

7 **A. I was confused because he just said that**
8 **they would be fine and just to leave them there**
9 **until the next round. Usually if I saw somebody --**
10 **if I knew somebody was unconscious, I would do what**
11 **I could to get them out or help them. He just**
12 **stated, leave them there. They'll be okay until**
13 **the next round.**

14 **Q.** Did you hear anything -- do you know what
15 round that was?

16 **A. It was near the end. It was right before**
17 **the last one.**

18 **Q.** Did you hear anything else -- any other
19 voices after that conversation?

20 **A. It was pretty quiet near the end. I**
21 **remember someone crawling out, though. And they**
22 **put their arm -- they were crawling out and fell**
23 **right into the pit of hot rocks and burnt his arm**
24 **up really bad. It was really gross.**

25 **Q.** Let me ask you about that. Do you recall

1 when that happened in terms of beginning, middle or
2 end of the ceremony?

3 **A. Around the middle. And then he put his**
4 **arm in a bucket of water for a while, let it cool**
5 **off. And then he went back in.**

6 **Q.** Where were you when you first became
7 aware that somebody had crawled into the --

8 **A. I actually watched him crawl into the**
9 **pit. Like, he was crawling, and then he put his**
10 **arm -- he went to put his arm down on the ground,**
11 **and it was the hole, and he put his arm in the pit**
12 **of rocks.**

13 MR. KELLY: Your Honor, objection.
14 Speculation.

15 THE COURT: Ms. Polk, as to foundation.

16 **Q.** BY MS. POLK: Sara, this was one of the
17 middle rounds?

18 **A. Yes.**

19 **Q.** Where were you?

20 **A. By the door.**

21 **Q.** Was the door opened or closed?

22 **A. It was open.**

23 **Q.** And what drew your -- do you recall how
24 many people were still inside Mr. Ray's sweat lodge
25 ceremony?

1 **A. I don't know.**

2 **Q.** Was that during the time people were
3 coming out?

4 **A. Yes.**

5 **Q.** What drew your attention to this man
6 inside?

7 **A. I was just looking in. I was sitting by**
8 **the door to help people as they came out, and he**
9 **was the next one coming out. So I was down there**
10 **ready to help him come out.**

11 **Q.** Are you able to recall where that man was
12 in relationship to the inside of the sweat lodge?
13 Let me get a little diagram, see if that will help.
14 I'm going to put up on the overhead Exhibit 414.
15 And I'll orient you that this is the entrance or
16 the gate.

17 And when you became aware of this man --
18 just, if you can show us, this is the pit in the
19 middle. Can you show us where the man was.

20 **A. He was back here crawling forward. He**
21 **was back here. And then when I saw him, he was**
22 **right here and then dipped his arm into the pit.**

23 **Q.** And tell the jury what you saw him do.

24 **A. He was crawling and fell -- like, he fell**
25 **into the pit, and then he continued out.**

1 Q. How did he get out once his arm went into
2 the pit?

3 A. He just pulled it out real quick and
4 continued crawling out of the sweat lodge.

5 Q. Did you do anything for him?

6 A. He came out. And I -- then I had told --
7 I don't remember who, but somebody was right there
8 with me. And I said, he just fell into the pit.

9 And they went over and put his arm in a bucket of
10 water. That's all that we really did to help. And
11 then we put a wet towel around his arm as well.

12 Q. Did you become aware of him toward the
13 end of the ceremony?

14 A. I don't recall exactly.

15 Q. Do you remember if he went -- if that man
16 who had burned his arm went back in for the last
17 round?

18 A. Yes. He did.

19 Q. How do you recall that?

20 A. I just remember him saying, okay. I'm
21 feeling a little better.

22 And he went back in the sweat lodge while
23 the door was open at one point in time.

24 Q. Do you recall whether Mr. Ray said
25 anything to that man as he went back in?

1 A. I don't remember.

2 Q. Did you ever become aware of another man
3 screaming about a heart attack?

4 A. Yes.

5 Q. When did that happen?

6 MR. KELLY: Your Honor, I'm going to object to
7 the leading question.

8 THE COURT: It was in leading form. Sustained
9 as to form.

10 Q. BY MS. POLK: Did something draw your
11 attention to another man during the ceremony?

12 A. My attention was drawn to a lot of
13 people. Just anybody who needed help, I was there
14 helping any way I possibly could.

15 Q. And do you have any specific recollection
16 about a man screaming?

17 A. Yes. There was a man there screaming he
18 thought he was having heart attack. He went on
19 screaming he was having a heart attack for about 15
20 minutes. Just screaming, I'm having a heart
21 attack. I don't want to die. Somebody please help
22 me. Everything along those lines.

23 Q. And did somebody help him?

24 A. There were people there talking to him
25 trying to calm him down. But they didn't really

1 know what to do to help. They didn't call an
2 ambulance or anything. They were just trying to
3 talk him down, trying to make him relax a little
4 bit.

5 Q. You said there were so many people that
6 your attention was called to. Do you recall how
7 many people?

8 A. Anybody who was coming out of the sweat
9 lodge really. There were so many people there.

10 Q. And do you recall how many people came
11 out that you specifically noticed needing
12 attention?

13 A. Everybody. I mean, I don't even remember
14 exactly how many people were in the sweat lodge,
15 but I do recall that everybody who came out did
16 need some kind of help.

17 Q. For the final round, Sara, after you
18 heard that conversation between Mr. Ray and
19 somebody else -- let me ask you this: That
20 conversation you just testified about, the voice
21 you heard from the inside speaking about people
22 being unconscious -- do you recall if that was male
23 or female?

24 A. I don't remember. I think there was a
25 male and a female who were both talking about it.

1 MR. KELLY: Your Honor, objection. Lack of
2 foundation. She doesn't remember. She's
3 speculating.

4 THE COURT: Sustained as to foundation.

5 Q. BY MS. POLK: What do you specifically
6 remember?

7 A. I just remember somebody yelling that
8 there were people unconscious. And they asked what
9 to do. And James said, just leave them there, that
10 they would be fine.

11 Q. And do you recall if you heard one voice
12 or more than one voice?

13 A. It was more than one voice.

14 Q. And do you recall the gender?

15 A. It was -- there was people screaming the
16 whole time. There was people yelling and having
17 conversations and stuff like that. So who actually
18 said that there were people unconscious, I don't
19 recall whether it was a male or female.

20 Q. For that final round after you heard that
21 conversation, do you recall how long that final
22 round lasted?

23 A. I didn't -- no. At least 15 minutes.

24 Q. Do you recall were there still people
25 talking throughout the final round, or what do you

1 remember?

2 **A. My attention wasn't drawn to the sweat**
3 **lodge when the door was down. I was out there**
4 **helping the people that were actually out of the**
5 **sweat lodge. But when the door came back up, I**
6 **would go back over to the door and help people**
7 **there.**

8 **So I can't really recall whether people**
9 **were talking while they were in there or not. My**
10 **focus wasn't drawn there.**

11 **Q. Do you recall whether before that final**
12 **round Mr. Ray called for any more rocks?**

13 **A. Before the final round? Like --**

14 **Q. Before the final round started.**

15 **A. He got more rocks after every round. For**
16 **the final round he had an additional -- additional**
17 **rocks put in. But I don't remember how many or**
18 **anything.**

19 **Q. And do you recall whether or not Mr. Ray**
20 **had more water come in for that final round?**

21 **A. Yes. The water came in every time the**
22 **rocks did.**

23 **Q. And, Sara, do you recall with respect to**
24 **the water and the additional rocks coming in for**
25 **the final round, when did that conversation that**

1 you testified about happen?

2 **A. I can't remember exactly.**

3 **Q. Do you recall whether it was before the**
4 **rocks and the water or after the rocks and the**
5 **water?**

6 **A. It was before. It was before. Before**
7 **the rocks and the water came in.**

8 **Q. Do you recall when the ceremony ended?**

9 **A. The time exactly, no. I don't. It was**
10 **just chaotic out there.**

11 **Q. How did you learn that the ceremony was**
12 **over?**

13 **A. When James Ray actually came out.**

14 **Q. Did he call for the door to be opened?**

15 **A. Yes.**

16 **Q. Do you recall who opened the door?**

17 **A. My mother and I.**

18 **Q. And tell the jury what you remember about**
19 **the end of the ceremony. Who came out first when**
20 **the sweat lodge ended?**

21 **A. James Ray.**

22 **Q. And what did you see -- notice about him**
23 **then?**

24 **A. He kind of crawled out and stood up and**
25 **gave a big stretch, and he said something. I don't**

1 **remember what exactly. And then I didn't see him**
2 **after that. I started helping the people come out.**
3 **And then after everybody came out, my mom and I**
4 **looked back into the sweat lodge, and we saw people**
5 **that we saw -- there were still three people in**
6 **there unconscious.**

7 **So we went over to James Ray and asked**
8 **him can we pull the back of the sweat lodge up to**
9 **get these people out.**

10 **And he said it would be sacrilegious, but**
11 **if you have to, you can.**

12 **So my mom and I went back around, pulled**
13 **up the back of the sweat lodge and pulled the three**
14 **people out.**

15 **Q. Sara, do you remember what part of the**
16 **sweat lodge it was that you and your mom opened up?**

17 **A. It was back here.**

18 **Q. Do you remember where the people were**
19 **laying that you pulled out?**

20 **A. Right here.**

21 **Q. And you said three people?**

22 **A. Yes.**

23 **Q. Did somebody ever come over to help you**
24 **and your mom pull them out?**

25 **A. It was my mom and I at first. And then**

1 **my dad came over and started doing CPR. And I had**
2 **to leave. I walked away from the scene. And I**
3 **started helping people over by the tarps.**

4 **Q. Sara, how long would you say had passed**
5 **between the time that Mr. Ray ended his ceremony**
6 **and people came out and you and your mom looked**
7 **back inside?**

8 **A. Probably about 15 minutes.**

9 **Q. What was going on during that 15 minutes?**

10 **A. People were just coming out of the sweat**
11 **lodge. They were throwing up and just -- it**
12 **wasn't -- people were coming out of the sweat**
13 **lodge, and I was just helping them as much as I**
14 **could by getting them water and wet towels and just**
15 **kind of helping as much as I could just to make**
16 **sure they didn't hurt themselves or anything like**
17 **that.**

18 **Q. What made you and your mom look back**
19 **inside the sweat lodge?**

20 **A. I just -- I don't know. I just looked**
21 **back in there. I don't know why. Just kind of**
22 **looked in there.**

23 **Q. During the 15 minutes that you were**
24 **helping people go out through the entrance, did you**
25 **notice whether anybody was passed out?**

1 **A. I didn't notice the three in the back**
2 **passed out. No.**

3 **Q.** How about other people being brought out
4 the front?

5 **A. Some people were actually drug out of the**
6 **sweat lodge. Whether they were unconscious or not,**
7 **I'm not sure, but quite a few of them were drug**
8 **out.**

9 **Q.** And where were those people put?

10 **A. We would take them over to the tarps and**
11 **lay them down there.**

12 **Q.** Do you recall where that -- the tarps
13 were with respect to the what we're calling the
14 "comfort station" or where the drinks and the fruit
15 was?

16 **A. It was, like, right in front of it.**
17 **Like, here's the comfort station. And then the**
18 **tarps were, like, right here.**

19 **Q.** And I want to ask you a few more
20 questions about the people who were down. And I
21 know it's difficult.

22 Do you remember, Sara, if the three
23 people you saw -- were they male or female?

24 **A. One was a male, and then the other two**
25 **were female.**

1 **Q.** And do you recall -- with respect to the
2 two people right here, do you recall how they were
3 laying down?

4 **A. They were laying down. They were holding**
5 **hands actually. But one was face down and then --**
6 **the woman was face down, and then the male was face**
7 **up.**

8 **Q.** And what do you recall about the male,
9 what he looked like?

10 **A. His face was completely blue. His face**
11 **was blue. He wasn't moving. His eyes were closed.**

12 **Q.** And do you remember anything about the
13 female?

14 **A. She looked the same. All three of them.**
15 **Their faces were blue and purple.**

16 **Q.** Did you help pull all three out?

17 **A. Yes.**

18 **Q.** And then once you pulled them out, what
19 did you do?

20 **A. My dad came up after that and started**
21 **doing CPR. And there were -- one of the nurses**
22 **came. And she came over there too. And there was**
23 **a crowd of people. I walked away. I couldn't**
24 **stand being over there anymore, but I couldn't just**
25 **leave. I felt like I had to be there to help. I**

1 **couldn't just walk away. So I went and helped the**
2 **other people that were laying on the tarps.**

3 **Q.** And this third person that was inside
4 that you helped pull out -- do you remember what
5 position that person was in?

6 **A. She was laying on her back.**

7 **Q.** You mentioned a nurse. Did somebody ever
8 identify themselves to you as a nurse?

9 **A. She was the -- I don't know if she was,**
10 **like, a certified nurse or anything. But she was**
11 **the one there or the one that the Dream Team had**
12 **there as the nurse. And I remember her looking up**
13 **at my dad asking, what do I do?**

14 **Q.** And how do you know, Sara, that the Dream
15 Team had that lady there as a nurse?

16 **A. Someone had told me earlier that day that**
17 **this was the nurse lady.**

18 **Q.** And when you heard the nurse ask your
19 dad, what do I do, where did that conversation take
20 place?

21 **A. As they were standing over the three**
22 **people that were unconscious with their faces all**
23 **funny colors.**

24 **Q.** Sara, just a couple more questions about
25 the people. Do you remember whether anybody tried

1 to cool them down once they were pulled out?

2 **A. I don't remember. My dad started doing**
3 **CPR, and I walked away.**

4 **Q.** Were you aware of anyone calling 9-1-1?

5 **A. My mom went and called 9-1-1.**

6 **Q.** And how do you know that?

7 **A. Well, at first she had told Amayra to go**
8 **call --**

9 MR. KELLY: Your Honor, objection. Hearsay.

10 THE COURT: Sustained.

11 **Q.** BY MS. POLK: Without telling us about
12 Amayra, did you hear your mom talking about calling
13 9-1-1?

14 **A. Yes. She said, we need to get an**
15 **ambulance down here. And she finally went and got**
16 **a phone and went and called 9-1-1.**

17 **Q.** Do you remember -- have any sense of how
18 long it took for help to arrive?

19 **A. I have no idea. I was too caught up in**
20 **everything to really worry about time or even think**
21 **about it.**

22 **Q.** During the time after you helped pull the
23 people out, what were you doing between that time
24 and the time that help arrived?

25 **A. I was helping a couple people go back to**

1 their cabins. And then someone told me to bring
2 this one girl back to her cabin. And I ran into
3 Shawna. And she -- I had her look at her because I
4 felt like she shouldn't have gone back to her
5 cabin. Her eyes were rolling back in the back of
6 her head at that time.

7 So she told me to turn around and take
8 her back and let the ambulance see her. When I was
9 on the way back, she -- her foot had fallen out of
10 the golf cart, and she let it just get run over.
11 That was a good indication that she did need
12 medical attention.

13 Q. How was it that you were helping -- and I
14 just mean physically. Were you walking? You
15 mentioned a golf cart. How were you helping?

16 A. We would -- we would help walk them there
17 or take them in the golf cart. After I helped a
18 couple people back to their cabins, I came back
19 there. And one ambulance was there at the time.
20 And I saw these people on those self-CPR machines.
21 I don't know what those are exactly. But that just
22 totally freaked me out.

23 After the ambulance got there, Fawn
24 Foster and my mom came up and started talking to me
25 and told me just to leave. And I just kept saying,

1 I couldn't just go. But they explained to me
2 proper help was there and they were in good hands
3 now. So I went back to the house.

4 Q. Why was it, Sara, that you started
5 helping people go back to their rooms?

6 A. Because people were just starting to walk
7 off, and they were stumbling. And there was some
8 people that were in the sweat lodge that were
9 helping other people walk back. Just wanted to
10 help as much as I could in any way I could.

11 Q. What did the -- do you remember what the
12 lady looked like that you had helped to the room
13 but then turned around and brought her back?

14 A. No.

15 Q. And you mentioned something about her
16 eyes. What did you notice about that lady's eyes?

17 A. They were rolling in the back of her
18 head. She wasn't even really looking straight.
19 She started nodding off, and her eyes were
20 fluttering, going in the back of her head.

21 Q. Were you in the golf cart with the lady?

22 A. Yes. I was driving the golf cart.

23 Q. How did that lady get in the golf cart?

24 A. Somebody helped her into the golf cart.

25 Q. Was anybody else in the golf cart with

1 you and the lady?

2 A. No.

3 Q. And when was it that you then turned
4 around and brought the lady back to the scene?

5 A. I was about halfway there to her cabin.
6 And then I saw Shawna. And I asked her to look at
7 her. I mean, I've never really dealt with any
8 people in distress or anything. And she told me
9 that she needed to go back. So at that point I
10 turned around and drove her back.

11 Q. And what happened as you were driving her
12 back?

13 A. Her foot fell out of the golf cart, and
14 she just let it get run over. So I stopped and
15 helped her get her foot back in the golf cart. And
16 I continued on back over there.

17 Q. And then when you got her back to the
18 scene, what did you do with her?

19 A. Some people helped her. It wasn't me.
20 Somebody helped her out of the golf cart and laid
21 her back down on the tarp. And I don't remember
22 exactly what I did, but I ran off and started doing
23 something else.

24 Q. You said after the first ambulance came
25 that your mother and Fawn made you go back to your

1 house?

2 A. Yes.

3 Q. Do you have any idea what time that was?

4 A. It was around sunset.

5 Q. Did you speak to anybody from law
6 enforcement that night?

7 A. Yes, I did.

8 Q. Do you remember how much time had passed
9 from the time you went back to your house and you
10 spoke to somebody?

11 A. A few hours. The sun was good and set by
12 that time.

13 Q. The sun was set by that time?

14 A. Yes.

15 Q. Where were you when you spoke to somebody
16 from law enforcement?

17 A. We were in the dining hall at Angel
18 Valley.

19 Q. How did you or why did you go from your
20 house to the dining hall?

21 A. I was told that the cops wanted to speak
22 with everybody. And then everybody was gathering
23 in the dining hall to just kind of get a little bit
24 of information about what was going on. So Shawna
25 and I went over and spoke with the police officer.

1 Q. Do you remember how long that interview
2 with the police officer took?

3 A. **Probably about 10 minutes.**

4 Q. And, Sara, how were you feeling during
5 that interview?

6 A. **I was just kind of shocked because I
7 didn't really know what was going on. I didn't
8 have any idea really about how anybody was doing,
9 anything of that sort. I was just kind of -- I
10 wanted some answers -- questions answered too.
11 What's going on?**

12 Q. When did you learn that some people had
13 passed away?

14 A. **Later that night when the EMT came and
15 spoke with my mother. My mom actually had to go to
16 the hospital that night and get checked out. And
17 that's when I found out that people had actually
18 died.**

19 Q. Who was with you when you learned that?

20 A. **Me, my mom, my dad, and I believe Fawn
21 was there.**

22 Q. And Sara, was that hard for you to hear?

23 A. **Yes.**

24 Q. And how were you the rest of that night?

25 A. **I was crying the rest of the night.**

1 Q. Did you talk again to a police officer
2 the next day?

3 A. **The next morning, yes.**

4 Q. And do you recall how long that interview
5 lasted for?

6 A. **Fifteen, 20 minutes.**

7 Q. Has this been a difficult thing for you
8 to talk about?

9 A. **Yes.**

10 Q. And have you talked about it much to
11 anybody?

12 A. **No. I try not to think about it.**

13 Q. You mentioned Shawna a couple times. Who
14 is Shawna?

15 A. **A family friend.**

16 Q. Sara, you talked about being at the door
17 when the gate or the door was opened?

18 A. **Uh-huh.**

19 Q. Did you ever make any observations about
20 the temperature inside the sweat lodge?

21 A. **It was hot.**

22 Q. And what do you - what do you base that
23 on?

24 A. **It was already hot outside, and then the
25 heat coming out of there was just excessive. It**

1 **was hot.**

2 Q. You talked about taking buckets of water
3 in between every round. Do you have any
4 recollection today of how the air felt in terms of
5 humidity?

6 A. **I don't know.**

7 Q. Did you ever get sick that day?

8 A. **After I found out people had actually
9 died, I got sick after that. But that was just
10 from nerves and everything like that.**

11 Q. While you were down in the area of the
12 sweat lodge, near the fire, near the door, when the
13 door was open, anything ever make you sick then?

14 A. **No.**

15 Q. You had talked, Sara, about before the
16 event began and participants gathered around a fire
17 and Mr. Ray made a little speech.

18 Do you remember what he said then?

19 A. **No. I don't remember what he said.**

20 Q. Did you -- how long, Sara, had you been
21 living at Angel Valley before this happened?

22 A. **About a year. Because we had lived in a
23 trailer, and then we moved over to the -- the
24 cabin. So yeah. About a year.**

25 Q. And were you present when there were

1 other ceremonies performed in that same sweat
2 lodge?

3 A. **I don't remember if it was the same sweat
4 lodge, but I'd been there for one of James Ray's
5 previous sweat lodges.**

6 Q. When this ceremony in 2009 was over, did
7 you see where Mr. Ray went after he came out of the
8 sweat lodge?

9 A. **He was by the sweat lodge a little bit.
10 He went and sat in the comfort zone. He sat there
11 for a little bit. And then I didn't see him at all
12 for the rest of the night.**

13 Q. Did you hear any announcement or any
14 instruction before you saw participants going to
15 their rooms?

16 A. **No.**

17 MS. POLK: Your Honor, may we briefly
18 approach?

19 THE COURT: Yes.

20 (Sidebar conference.)

21 THE COURT: Yes, Ms. Polk?

22 MS. POLK: Your Honor, Sara was present
23 in 2008 for Mr. Ray's sweat lodge ceremony. And I
24 know we've had some Court rules. And I'm just not
25 sure at the moment what the Court's position is on

1 Sara talking about events in 2008.

2 THE COURT: My concern has to do with the
3 leading. If somebody's -- I think the ruling is
4 pretty consistently has been if somebody has -- if
5 there is some effect, if it affects what they do or
6 something in 2009, it would seem to be relevant.

7 But the issue has come up before,
8 Ms. Polk, about leading into various things and
9 suggesting things. So someone's experience with
10 this and how it might affect them in 2009, I think
11 I've said quite consistently, I think that would be
12 admissible.

13 MS. POLK: And I understand that ruling. It
14 would be just on the issue of causation itself.
15 Both of her parents have testified about events
16 in 2008 as it related to causation. And the Court
17 had made a ruling that until there was the medical
18 link -- and I would submit we certainly have the
19 medical link between what participants experienced
20 in 2008 as it relates to the issue of causation.

21 THE COURT: I want to hear from Mr. Kelly at
22 this point.

23 MR. KELLY: Judge, I disagree in regards to
24 the assertion that there is a medical link. We've
25 argued that extensively. The Court has heard the

1 testimony from the testifying physicians. I'll
2 submit it on that basis.

3 In regards to whether this lay witness,
4 whether she was present or not, can testify about
5 her observations in 2008, it's simply to
6 corroborate her mom and dad. It's cumulative.

7 THE COURT: The ER doctor made a statement
8 regarding causation and cause of death, as I
9 recall. I mean, I made a point of listening for
10 that.

11 Mr. -- well -- it's -- again, can't be
12 leading. But in terms of observations, it's --
13 I'll permit it with this witness. But we're really
14 getting where it can be cumulative very quickly.

15 Yes.

16 MR. KELLY: Judge, for the record, this,
17 again -- if she makes some offhanded remarks such
18 as all the participants in 2008 were screaming and
19 falling down outside and vomiting and throwing up,
20 then what I had anticipated as a 45-minute to an
21 hour cross-examination is going to be a day and a
22 half because we have to go back through those
23 photographs and impeach the witness with the actual
24 evidence. Again, in terms of the length of trial,
25 we have to call participants from 2008 to deny they

1 suffered any type of malaise.

2 We spent, collectively, the state and the
3 defense, literally, my recollection is a week, if
4 not greater, on this issue as to the condition of
5 those participants. So, Judge, I would submit that
6 whatever this witness, her minimal involvement
7 in 2008, is simply cumulative and ask the Court to
8 preclude any reference.

9 I understand the relevance if -- and we
10 use Mark Rock as an example. I was in the sweat
11 lodge in 2008. So in 2009 I need to lift the flap.
12 I understand that connection. But this is the
13 volunteer -- actually the child of a volunteer at
14 Angel Valley.

15 And it's cumulative. It's highly --
16 potentially highly prejudicial. I haven't heard
17 the response, but I anticipate what -- the response
18 is going to be consistent with what was provided by
19 her mother and father.

20 THE COURT: Ms. Polk.

21 MS. POLK: Your Honor, again, on the issue of
22 causation, as the Court knows, the state hopes to
23 be able to call Dr. Kent, who would talk
24 about 2008. We have the testimony from only two
25 other witnesses who talked about 2008 and then

1 Jennifer Haley who talked very briefly about -- I'm
2 not sure. Anyway, she talked very briefly
3 about 2008. And that's all the testimony we've had
4 today about 2008.

5 THE COURT: And that was in one sense almost
6 uncontested, as I've indicated before. I know
7 Mr. Li at one point indicated impeaching the
8 Mercers -- that came up -- and said here's this
9 difference between what is the distinction between
10 corroboration and cumulative. It just -- it's just
11 we've gone through so much of that.

12 MS. POLK: Your Honor, I don't --

13 THE COURT: Go ahead, Ms. Polk.

14 MS. POLK: I don't have to talk about 2008
15 with her. I think, as the Court and counsel has
16 noted, it's not easy for her to talk about the 2009
17 events.

18 My concern is -- goes back to what
19 Mr. Kelly just said, that the photographs impeach
20 witnesses have said. And, again, I don't know --
21 the defense has not let us know who they intend to
22 call in defense and if they're going to call people
23 from those earlier years to say that did not
24 happen. I just don't know. And I don't want to be
25 in a position where it's suggested that what

1 happened in 2008, somehow the Mercers -- in 2007,
2 that the Mercers made up.

3 THE COURT: I'm going to -- I made a ruling.

4 You can ask questions. But I'm going to be very
5 mindful if it's just -- when it becomes cumulative.
6 And also the aspects of possibly leading. And if
7 she makes just these general characterizations,
8 then you have what Mr. Kelly says about that whole
9 thing going through the photographs again and the
10 different interpretation. But I'm not going to
11 just sit here and craft the trial at this point.

12 You may proceed, Ms. Polk.

13 MS. POLK: Just a couple things. First of
14 all, regarding cumulative, the state would prefer
15 to have Dr. Kent testify. And I would rather not
16 ask her about 2008. I would rather ask Dr. Kent
17 about 2008. And if asking this witness about 2008
18 means that Dr. Kent doesn't get to testify, I won't
19 ask her about 2008, because I would rather have
20 Dr. Kent who is a doctor.

21 The second issue is -- and I guess I need
22 input from Mr. Kelly. This is the debate we've had
23 before, which is that if I don't lead, then
24 witnesses say -- give us the generalities that the
25 defense objects to. And the Court objects to them.

1 And I understand it's objectionable. That's why
2 carefully crafted, leading questions are used to
3 limit as to what this person has personally
4 observed. And with Mr. Li, he wanted me to ask
5 leading questions on one witness, and then
6 Mr. Kelly came in on the next witness and objected
7 to the leading questions. I just want to lay that
8 out there.

9 THE COURT: Mr. Kelly, do you have anything?

10 MR. KELLY: Judge, my understanding of the law
11 is that if we're on thin ice in a particular area
12 that could cause problems during a jury trial, then
13 in a concerted effort the Court and counsel agree
14 to lead a witness through. Maybe that's the thing
15 to do. But I would need to know what those
16 questions are versus putting me in the position of
17 sitting here and attempting to make that decision
18 from counsel then.

19 So I guess I'm asking -- I don't know the
20 answer to the question. And I'm asking the state,
21 what is the proffer in regards to this witness's
22 knowledge regarding 2008? I don't even know.

23 THE COURT: Okay. I want to address one thing
24 at a time and clear this up.

25 Ms. Polk, I have not made a ruling on

1 David Kent. But I don't want anything you do with
2 this witness to be influenced by what I might or
3 might not do there.

4 David Kent -- the timing of David Kent
5 and the fact of it coming in as an expert, I have a
6 great deal of concern. So you cannot -- I'm saying
7 right now you need to ask the questions you want of
8 this witness.

9 With regard to leading, I've said before,
10 especially when you're talking about causation,
11 it's strictly -- and this really has to do with how
12 it might affect her -- and I don't know that it
13 did -- with what happened before. But it's what's
14 actually observed, whether it's chronological or
15 not. That's a different thing. But it has to be
16 directly observational and not these
17 generalizations. That's where the problem is.

18 So really, it should not be leading. It
19 should be really focused on just what the actual
20 observations are. And I would think it's going to
21 be consistent with Mr. Ray's statements come into
22 evidence and what the Mercers have already said.
23 That's my view of it.

24 MS. POLK: Your Honor, can we take an early
25 lunch break, and perhaps I can discuss this issue

1 with Mr. Kelly a little further?

2 THE COURT: Yes.

3 Mr. Kelly, how much did you estimate your
4 cross was going to be?

5 THE WITNESS: I -- I asked Ms. Polk before we
6 started. She thought the direct was about an hour.
7 And I think she was held true to that. And as a
8 result, I thought my cross was 45 minutes to an
9 hour. And it was focused simply on what happened
10 in 2009. I had nothing to do with any prior
11 incidents.

12 And, for the record, Judge, in addition
13 to the objections that were previously articulated,
14 I would submit this is a 403 issue as well.
15 Specifically -- I heard your explanation. And I
16 believe you used the term it does corroborate or is
17 cumulative to Ted and Debra Mercer's testimony
18 regarding 2008. And it begs the question, what
19 relevance does it have? It's minimal. It would be
20 outweighed by any prejudicial.

21 THE COURT: It's when does something come
22 across this line from corroborative to being
23 cumulative when a certain body of evidence is being
24 challenged. So that's why I'm permitting some
25 questions. I mean, I think it's appropriate.

1 Ms. Polk.

2 MS. POLK: Right. And I understand that
3 distinction, which is why I believe that Dr. Kent's
4 testimony is not cumulative but corroborative. If
5 we can take the break early, I can talk to
6 Mr. Kelly about it.

7 The other thing is we do have an issue
8 for the Court on an unrelated -- on the Virginia
9 Brown matter.

10 THE COURT: What Mr. Kelly had talked about at
11 the start?

12 MR. KELLY: Yes.

13 THE COURT: That's something else we need to
14 talk about. Before we break, I want to answer this
15 question, Which is, essentially, no. It's not
16 important to hear what the lawyers object to. The
17 question is whether or not if I overrule it and the
18 evidence comes in, they consider it. If I sustain
19 it, it's not important what the lawyers says. It's
20 not important one way or the other.

21 Does anybody disagree with that?

22 MR. KELLY: May be preferable that they don't
23 know.

24 THE COURT: That's the idea about having
25 speaking objections and those things, too.

1 We'll go ahead and break after I do this,
2 then.

3 (End of sidebar conference.)

4 THE COURT: Ladies and gentlemen, we're going
5 to break in a minute.

6 And Ms. Mercer, keep your seat, please.

7 There was a juror question that came in,
8 and I want to answer it right now. And it had to
9 do with whether when an attorney makes an
10 objection, is it important for the jury to hear the
11 reason for the objection, and apparently people are
12 not able to hear.

13 The short answer to that is no. It's not
14 important to hear what the lawyers are saying in
15 the context of objections. The important thing is
16 this: If I sustain an objection, the question and
17 the answer really have nothing to do with what you
18 consider. If I overrule the objection and the
19 evidence, the testimony comes in. Then you
20 consider it. That's the only thing that you need
21 to be concerned with.

22 What the attorneys might say in an
23 objection or if the other attorney responds, that
24 is just for the Court to consider. Okay?

25 So we're going to go ahead and take the

1 recess now rather than just have people watch us up
2 here. These conferences just become necessary.

3 Again, it's not anybody's fault in any
4 way. They just have to be done as the trial
5 progresses. And you've seen a number by now. But
6 please be -- I'm going to ask that you reassemble
7 at the regular time at 1:30. There are some
8 matters to discuss. So the regular time at 1:30.

9 Remember the admonition.

10 And, Ms. Mercer, you're going to be
11 excused as a witness too right now for the recess.
12 The rule of exclusion of witnesses has been
13 invoked. And that just means you cannot
14 communicate or talk to any other witness about your
15 testimony or about this case until the trial is
16 over. I think you've heard that before, but I like
17 to remind everybody. Remember that rule applies to
18 you. But you can talk to the attorneys as long as
19 other witnesses are not present.

20 Okay?

21 THE WITNESS: Okay.

22 THE COURT: We'll take the recess now.

23 I'm going to ask the parties to remain.

24 Thank you.

25 (Proceedings continued outside presence

1 of jury.)

2 THE COURT: The record will show the jury has
3 left the courtroom. The witness has left. I think
4 the bench conference actually accomplished what was
5 the concern.

6 But, Ms. Polk, anything further on that?

7 MS. POLK: Not on the bench conference.

8 THE COURT: Mr. Kelly?

9 MR. KELLY: Judge, I do have one comment on
10 the bench conference. There was a statement by
11 Ms. Polk that we have not advised them as to our
12 potential witnesses maybe during the presentation
13 of the defense case.

14 Judge, we have made complete disclosure
15 throughout the pendency of this matter including
16 who our trial witnesses may be. My point was
17 simply that that decision cannot be made until
18 we're able to assess the extent of the state's
19 evidence.

20 And as I mentioned at the sidebar, we're
21 still in a quandary as to how many of the
22 participants, if any, from 2008 should be called to
23 rebut the inferences raised by Ted and Debby
24 Mercer. So, unfortunately we can't give the state
25 an answer right now. But we've made complete

1 disclosure as who those possible witnesses may be.
 2 Of course, again, Judge, I would assert I
 3 that was reviewing 401, 402 and 403. If a
 4 16-year-old girl who was present in 2008 casually
 5 observes some participants, I believe that has
 6 minimal, if any, relevance to any issue pending
 7 before this court. It would be cumulative to the
 8 testimony of her mother and father and, most
 9 importantly, potentially prejudicial depending on
 10 what her response was.

11 And I do understand the Court's ruling
 12 that if somehow it affected her behavior in 2009,
 13 that would be different. But we have her
 14 October 8th, 2009, taped statement. And she
 15 doesn't make any reference to any problem in 2008.

16 In fact, distinguishes 2008. She says,
 17 Detective Parkison asked, anybody have concerns
 18 about that many people being in the sweat lodge?

19 And her response is, no. They've done it
 20 before, like, this is a yearly event. That
 21 happens. So it's pretty normal. But this year,
 22 2009, things got out of hands.

23 So given that actual statement she made
 24 to the investigators on October 8th, 2009, I asked
 25 at the sidebar what the proffer would be in regards

1 to her testimony relating to 2008 and then asked
 2 the Court to consider all those issues which I
 3 raised at sidebar and have been previously
 4 discussed with this Court in terms of relevance,
 5 prejudice, in this regard.

6 THE COURT: Hard to make a determination about
 7 number of witnesses if there is going to be
 8 contesting of testimony. I'd mentioned before that
 9 there is a possibility that rebuttal might come in
 10 at that phase. But I don't like to say anything
 11 about evidence. Of course, never with the jury
 12 around. But even in these context, just here in
 13 legal discussions, I don't like to say anything
 14 about the evidence there that somehow comments
 15 about evidence except to the extent to make these
 16 evidentiary rulings.

17 And it's just hard to see why there would
 18 need to be more, Ms. Polk, of this evidence that
 19 has come in that it seems to a large extent isn't
 20 contested. But it may be in terms of the exact
 21 numbers of people or something like that, but the
 22 general nature of what occurred, Ms. Polk.

23 What I'm saying is there really is a
 24 danger of just having cumulative testimony. The
 25 question with David Kent is -- that to me is a

1 completely different question. Because that
 2 proposed testimony for Mr. Kent -- and I say Mr. --
 3 I have -- I don't know. The defense is telling me
 4 there hasn't been any showing actually that he is,
 5 in fact, a physician or doctor.

6 But that indeed would not be cumulative.
 7 It's a whole different type of testimony really.

8 As I mentioned at the bench conference,
 9 the timing of the disclosure and -- is of great,
 10 great concern there. Especially when you add the
 11 expert aspect to it as well.

12 But, as I said here, the issue of David
 13 Kent -- that cannot -- that's not going to affect
 14 what my rulings will be as to cumulative evidence
 15 with regard to this witness, Ms. Mercer, Ms. Polk.

16 MS. POLK: Thank you, Judge. I had expressed
 17 that concern at the sidebar. I -- it's not clear
 18 to me that what the Mercers testified and Jennifer
 19 Haley testified about in 2008 is uncontested. In
 20 fact, at the sidebar, Mr. Kelly made the statement
 21 that they believe by going through all the
 22 photographs that they impeached all of those
 23 witnesses, or at least the Mercers.

24 I think the bigger concern for the state
 25 is that the jury knows that Sara Mercer was there

1 in 2008. And if she doesn't testify about 2008,
 2 will they assume that somehow what her mom and dad
 3 said about 2008 is simply not true.

4 If there could be a stipulation or an
 5 instruction to the jury simply that Sara Mercer is
 6 not going to testify about 2008, the state would
 7 accept that and not question her. It's just that
 8 it -- it leaves us in a bit of quandary that they
 9 know she was there in 2008. They don't understand
 10 why she's not talking about 2008, and what
 11 inferences will they draw from that? Will they
 12 assume that she didn't see anything in 2008, which
 13 would then pit her against her parents?

14 But I think if we had an instruction to
 15 the jury simply stating to them that, although they
 16 heard testimony that Sara Mercer was there in 2008
 17 or for Mr. Ray's sweat lodge ceremony, she will not
 18 be testifying about that in this case.

19 THE COURT: And I indicated for now you can
 20 ask about 2008, but not in a leading fashion. And
 21 it would have to be, again, direct observations.
 22 Or a stipulation -- that would seem to be a
 23 solution as well.

24 And, Mr. Kelly, you wanted to bring up a
 25 scheduling thing, I think.

1 MR. KELLY: First, one thing. I have to
2 correct the record. Whether or not Ted and Debra
3 Mercer have been impeached during their
4 cross-examination by use of the photographs will
5 be, obviously, a jury determination.

6 Something Mr. Li and I analyzed. And,
7 again, I believe I made the record clear is we
8 would object simply based on cumulativeness.

9 And in response to Ms. Polk, this witness
10 couldn't even remember what she did on the morning
11 of October 8, 2009. I don't think the jury is
12 going to somehow improperly imply that since she
13 doesn't talk about 2008, that further impeaches her
14 parents. I don't think anybody is thinking about
15 it unless we bring it up. Of course, that gets
16 into the entire 403 issue.

17 Judge, my second issue this morning, and
18 I appreciate the time, is yesterday the state said
19 they had provided us a witness list. I believe
20 there were nine remaining witnesses. We know that
21 one proposed witness is Dr. Kent, which we object
22 to, which will leave eight. We'd like to know who
23 those folks are. We still don't have that list.
24 That was, essentially --

25 THE COURT: I remember writing down a list

1 sometime ago that had --

2 MR. KELLY: Eleven, I think.

3 THE COURT: -- 11 or 12 people.

4 Ms. Polk, are those the same people?

5 MS. POLK: Your Honor, they are. And I'll
6 communicate with the defense directly. But we
7 have -- yesterday I stood up and said that we would
8 not be calling Rick Ross or Doug Sundling, That we
9 would call them in reserve or call them in
10 rebuttal.

11 But I also would just again iterate the
12 caveat that during this break if we evaluate and
13 determine that some people who are on our witness
14 list -- that we do need to call them but they're
15 not on the list previously given to the defense,
16 that we do reserve the right to call them.

17 But I will do my best to continue to get
18 our order of witnesses to the defense in a timely
19 fashion.

20 Judge, the remaining issue that I have is
21 I still have, I believe, it's exhibits 401, 406 and
22 410. I have spoken with Mr. Kelly and asked the --
23 whether defense would stipulate that the signatures
24 on those documents are from the purported author.
25 And he was going to consult with his team and get

1 back to me.

2 But before making the decision whether or
3 not to call Virginia Brown, if the defense is
4 willing to stipulate that those are the signatures
5 on all three of those client files, I would offer
6 to the Court, then, the files for admission. And
7 if the Court is going to accept them, then that
8 obviously would affect our decision whether or not
9 to call Virginia Brown.

10 THE COURT: Well, two different questions. If
11 the signatures are verified, then that part of the
12 problem, the foundation, would be taken care of.
13 And relevance and all those are different unless --
14 well, they're just different concerns unless it
15 gets into the other aspect.

16 And I went back and read my February 22nd
17 ruling. I was even saying back there, I'll take a
18 try at this to give some guidance. But until I
19 know what the actual offer is and I have authority,
20 I would not be able to provide anything other than
21 this general guidance.

22 But I'd like to ask Mr. Kelly or Mr. Li
23 where things stand on the signatures.

24 MR. LI: We'd stipulate on the signatures. I
25 think our main objection has been just the subject

1 of our motion, the substance of these particular
2 client files, all of the additional information
3 contained in there.

4 We understand the Court's ruling. And we
5 had filed at the beginning of trial motions to
6 exclude all of these documents for all of the
7 reasons that the Court's already aware. But with
8 respect to the signatures, we don't dispute them.

9 THE COURT: All right. I want to look at
10 these exhibits over lunch. Is it 401, 406 and 410?

11 MS. POLK: Your Honor, we actually had --
12 after this last conversation with the Court, we
13 redacted and provided copies to the defense and
14 have marked the redacted version. And I'm going to
15 get you the number.

16 MR. KELLY: Judge, the redactions were simply
17 the personal information of the signator. It
18 didn't address the concern the Court's just
19 mentioned or Mr. Li. And that has to do with all
20 the other hearsay wording on the documents --
21 relevance, prejudice, et cetera.

22 I'm going to hand -- Mr. Li is going to
23 make the argument.

24 MR. LI: Well, I think the Court -- I'm not
25 going to waste the Court's time. I mean, I think

1 the Court can read it. But there is a lot of
2 information in here that is not relevant.

3 THE COURT: Can I just make sure I have the
4 exhibits that are being tendered, being offered at
5 this time?

6 MS. POLK: I can give you the exhibit numbers.

7 THE COURT: Okay.

8 MS. POLK: The new exhibit numbers are 993.
9 That pertains to Liz Neuman. 994 pertains to James
10 Shore, and 995 pertains to Kirby Brown.

11 THE COURT: 993, -94 and -95. I'm going to
12 look these over now.

13 We can be back at 20 after 1:00.

14 (Lunch recess.)

15 THE COURT: The record will show the presence
16 of Mr. Ray and the attorneys. I looked through
17 exhibits 993 -94 and -95. And I really made a
18 ruling on January 13, 2011. It wasn't the main
19 part of that ruling in terms of volume or the text
20 devoted to it.

21 But the refund policy really speaks, I
22 think, to the general issue and the other parts of
23 the ruling too that really discusses financial
24 position and business practices.

25 Without the testimony suggested -- and

1 what really is a rather lengthy ruling, the
2 evidence that's admissible is, as I stated, and it
3 includes the revision I mentioned the other day,
4 which is the amounts paid by people for JRI
5 seminars attended. This packet of exhibits
6 includes a lot of other information that I don't
7 find relevant. The relevance hasn't been shown.
8 So that's the information that would be admissible.

9 Counsel, anything further on that?

10 MR. KELLY: Not on that issue, Judge.

11 THE COURT: Ms. Polk, before I move on.

12 MS. POLK: Your Honor, yes. What the state
13 will do -- if I'm understanding, for example, if we
14 can look at Exhibit 995, Bates 6649.

15 THE COURT: Okay.

16 MS. POLK: Is it the Court's ruling that page
17 would be admissible?

18 THE COURT: That goes directly to payment.
19 And that's the manner payment is going to be
20 established rather just the stipulation this
21 seminar with this amount, then that would be
22 admissible.

23 MS. POLK: Then what the state will do is
24 further redact these exhibits to pull out the page
25 that follows the page I just referenced. And with

1 that, Your Honor, if assuming that the defense is
2 willing to stipulate that it is the signature of
3 Kirby Brown, Liz Neuman and James Shore, once we
4 have further redacted and the state would then move
5 to admit, would the Court be admitting this?

6 THE COURT: Mr. Li, you said you would
7 stipulate to the signatures?

8 MR. LI: Yes, Your Honor.

9 THE COURT: So that's what would happen.

10 MS. POLK: And the Court would admit them?

11 THE COURT: Mr. Kelly?

12 MR. KELLY: Judge, if the redaction is
13 consistent with the January 13th ruling, we'll
14 stipulate.

15 THE COURT: And Ms. Polk pointed to a very
16 specific -- just, basically, receipts showing
17 actual payment.

18 MR. KELLY: Right.

19 THE COURT: And that -- that would be within
20 that ruling. I'm just looking this over. I'm
21 asking everybody else to do that.

22 Mr. Kelly and Mr. Li, please look at this
23 right now to make sure there is not something else
24 in there that could bring about another question.
25 Here is --

1 MR. LI: I'll approach.

2 THE COURT: Thank you, Mr. Li. Here is the
3 page Ms. Polk was referring to.

4 MR. KELLY: As an example, I understand we can
5 mark Bates stamp No. 6646 on an Exhibit 995, give
6 it a new number, and that would be the exhibit
7 offered. If that's the case, we agree.

8 THE COURT: I think we refer to 6049, but it's
9 a similar kind of receipt. I think Mr. Li is
10 looking at it right now.

11 MR. LI: I'm looking at -- sorry, Your Honor.
12 I'm looking at Exhibit 993, which relates to
13 Ms. Neuman's records. And I don't know what pages
14 the state would intend to offer in that regard. If
15 it's similar that it is only credit card receipts,
16 we would stipulate to that. Another way to handle
17 it would be to turn a stipulation that says
18 basically the same information.

19 THE COURT: Well, that's --

20 MR. LI: Which we'd also be willing to enter
21 into.

22 THE COURT: Okay.

23 MS. POLK: Your Honor, what we will do is
24 further edit these packets, present a few to the
25 defense, and we will take out all the information

1 that -- I believe I understand the Court's ruling,
2 but information that pertains to what they paid for
3 events will stay in. We'll take care of it, give
4 the packets to the defense and raise it again this
5 afternoon.

6 THE COURT: Thank you.

7 MS. POLK: Thank you, Judge.

8 THE COURT: Mr. Kelly, you wanted to raise an
9 issue?

10 MR. KELLY: Judge, I had a chance to consult
11 with Ms. Polk in regards to their proposed
12 questions of Sara Mercer relating to the 2008
13 incident. I understand the final question or the
14 most important question was, were you there
15 during 2008? She would respond yes. And then what
16 did you observe?

17 Judge, I don't know what the response is
18 going to be. I would simply reassert all of our
19 arguments and concerns, whether they relate to 403
20 cumulative, et cetera, how it relate to causation
21 from a 16-year-old lay witness.

22 THE COURT: With the two different witnesses
23 and part of this -- I think it was because of
24 different approaches, the defense urged because of
25 the nature of the Court's rulings -- and in one

1 instance Ms. Polk led. And that was acceptable.
2 And the other instance started doing that way, and
3 it wasn't acceptable.

4 And I indicated at the bench conference,
5 I think it's best not to lead. But to just say
6 observations, there has to be some targeting. It
7 has to be observations with regard to any kind of a
8 physical or mental condition or something that says
9 that and then a specific observation on a person.

10 It can't be, as we have one witness
11 indicated, well, I guess I exaggerated. Okay.
12 People were all over -- you know -- that kind of
13 testimony that when the witness had to focus it,
14 just admitted I was exaggerating. That's the kind
15 of danger I'm talking about.

16 So I don't consider it leading to get
17 somebody to an area of physical or mental problem
18 or something like that, a perception of an
19 observation of what someone believed to be a
20 physical or mental problem and then going from
21 there and asking specifically, what do you recall
22 about a specific person with any such problem?

23 Questioning along that line, Mr. Kelly
24 and Mr. Li, I don't think that's leading under
25 these circumstances.

1 MR. LI: Your Honor, since you addressed me, I
2 mean, I think one of the issues would be there is
3 still a foundational issue. As I understood the
4 Court's ruling, did this prior event have any
5 impact on their behavior in a subsequent event?

6 THE COURT: That's one aspect. The other goes
7 back to the causation and whether this is
8 cumulative, whether it's somehow appropriately
9 corroborative before it gets to the point of being
10 cumulative.

11 If that's a distinction that was briefed
12 that way, I don't know the cases deal with it in
13 that fashion. It's a discretionary matter.

14 So two aspects, Mr. Li. That's true on
15 the first. But on the second, the question is, if
16 there is going to be some testimony about
17 observations, I made the ruling about causation.
18 There has been additional expert testimony on that.
19 And if it relates to actual observations and what
20 was observed in the 701 -- well, within 701, that
21 type of opinion, view, about a condition; someone
22 unresponsive, somebody vomiting, that kind of
23 thing. That's appropriate.

24 And the question is how to get there.
25 I'm afraid a question, what did you observe, who

1 knows what that's going to elicit.

2 MR. KELLY: Judge, I'd ask you to consider
3 this: If I understood from the opening statement
4 made by Ms. Polk that the causation is heat stroke
5 as it relates to the death of the three people
6 alleged in the indictment, what we're talking about
7 ultimately is manslaughter. Then in terms of
8 causation, a lay witness's perception as to the --
9 what he or she observed in 2008 may somehow be
10 related to a medical opinion provided by a witness
11 as to the cause of death. That's what we're
12 talking about.

13 THE COURT: I think so.

14 MR. KELLY: So if this witness -- I would
15 suggest to the Court that unless this witness says
16 something new, outside of vomiting, sweating,
17 passing out, altered mental states -- unless she
18 has something in addition to what Ted and Debby
19 Mercer have to say in regards to physical
20 manifestations observed by a lay witness, which may
21 or may not then be connected or relied upon by the
22 expert witness, I guess I see that as cumulative
23 and highly prejudicial.

24 Because -- and I agree with you, Judge,
25 that if you are going to allow those questions, I'd

1 ask that did you see anybody?

2 THE COURT: What you believed to be a physical
3 or mental problem, something like that?

4 MR. KELLY: Right. I think my main point is,
5 I do not understand how that cannot be simply
6 nothing more than cumulative. Because I don't
7 think it's in dispute in this courtroom that Debby
8 Mercer, Ted Mercer or Sara Mercer cannot provide an
9 opinion as to the cause of death as to the three
10 decedents in 2009 as heat stroke.

11 So what they can talk about are
12 observations. And if those observations mirror one
13 another, they're simply cumulative. And some
14 expert -- apparently the state's assertion is that
15 Dr. Dickson somehow connected this up. I don't
16 think Dr. Mosley did.

17 Then, again, I would assert that just
18 simply allowing this witness to say the same thing
19 is cumulative. And, of course, the danger is
20 prejudice because I'm not sure the jury is going to
21 understand these finer points.

22 MR. LI: And, Your Honor, with respect to
23 Dr. Dickson -- I apologize.

24 THE COURT: That's okay.

25 MR. LI: Just with respect to Dr. Dickson, my

1 recollection of the testimony is that it was in two
2 parts. One part was, did you -- in making your
3 diagnosis -- before lunch -- in making your
4 diagnosis, did you consider whether or not -- did
5 the fact that -- you know -- that the guys' faces
6 were red or whatever, did that impact your
7 diagnosis?

8 No, it didn't. Because that could be due
9 to nonspecific causes. After lunch Mr. Hughes
10 asked him a series of questions which were,
11 essentially, did you consider the fact that
12 people's faces were red? Did you consider -- you
13 know -- vomiting, et cetera? But it wasn't the
14 same question, Your Honor.

15 So I'm not sure that this -- that
16 Dr. Dickson actually did say, yeah. You can look
17 back at prior incidents. He's not even a medical
18 examiner, for starters. I don't believe he
19 actually said that it's his opinion that you look
20 back at prior incidents to figure out the actual
21 physiology of a completely different person in a
22 completely different year.

23 So -- and obviously the record will speak
24 for itself. But that was my recollection of what
25 happened.

1 THE COURT: Later in the day I went back and
2 looked at that testimony from Dr. Dickson. And it
3 was made at about 11:47 a.m. And I have that so I
4 can look at it again. You don't have -- you aren't
5 able to go back. I know you can't keep it
6 day-to-day. I don't think.

7 MR. LI: We pay for it.

8 THE COURT: Ms. Polk or Mr. Hughes, what's
9 your -- I think the question was asked, and he made
10 the connection. That was my impression when we
11 went back and looked.

12 MR. HUGHES: Your Honor, that was my
13 impression, particularly after lunch. I believe he
14 did make the connection that it was relevant to his
15 opinion. And, Your Honor, even if he had not made
16 that connection whether it was relevant or not, he
17 did talk about the signs and symptoms that you
18 would expect to see. He explained that it's a
19 very -- it's a very fine point on that continuum
20 between the heat exhaustion and the heat stroke,
21 which is why I think it's relevant for the jury,
22 now that they've heard the signs and symptoms, to
23 hear about signs and symptoms that were observed
24 in 2008. Because that does go very directly to the
25 causation issue.

1 THE COURT: Well, I'm repeating what I said on
2 earlier occasions. It's certainly getting very
3 close to cumulative. So I would not anticipate
4 there would be very much testimony in this area at
5 all.

6 Ms. Polk.

7 MS. POLK: Your Honor, and I understand the
8 Court's ruling. I just wanted to address something
9 that just came up because it comes up periodically
10 during argument on various issues. And that's what
11 the state has to prove.

12 The state has to prove that the defendant
13 recklessly caused the death. We don't have to
14 prove exactly what caused them. And there has been
15 many references to my opening statement. In my
16 opening statement I informed the jury that the
17 state had to prove that the defendant recklessly
18 caused their death. And then I spent a great deal
19 of time talking about how he did that.

20 I did tell the jury that the medical
21 examiners found that one of the victims died from
22 hyperthermia and the other two heat stroke, and
23 clearly the state believes that heat stroke is what
24 caused the death of the victims.

25 But what we have to prove, according to

1 the statute, is that it's the defendant's conduct
2 that caused their death. And that issue keeps
3 coming up periodically. And I just wanted to make
4 that record.

5 THE COURT: Mr. Kelly.

6 MR. KELLY: Judge, that just ignores the
7 entire concept of unforeseen super -- intervening
8 cause or contributing factors due to the conduct of
9 other people. So we do believe our assertion is
10 correct.

11 Put the state on notice. If we need to
12 litigate that further, I'd suggest we do it.
13 Obviously you heard from the very opening of this
14 case. And the record speaks for itself. The
15 government's assertion as to causation and how it's
16 evolved over time, given Mr. Li's opening, doesn't
17 change Arizona law. And we believe we're correct.

18 THE COURT: Well, you -- being clear, the
19 position regarding intervening cause. And you've
20 made clear too where the burden remains despite
21 raising that possibility, potential defense.

22
23 Thank you.

24 (Proceedings continued in the presence of
25 jury.)

1 THE COURT: The record will show the presence
2 of Mr. Ray, the attorney, the jury. The witness,
3 Ms. Mercer, has returned to the stand.

4 You're still under oath; you understand
5 that?

6 THE WITNESS: Yes.

7 THE COURT: Ms. Polk.

8 Q. BY MS. POLK: Good afternoon, Sara.
9 Sara, just a couple more questions about 2009. You
10 have testified this morning about the conversation
11 you had while you were posted at the entrance to
12 Mr. Ray's sweat lodge ceremony and specifically a
13 conversation that some people were unconscious.

14 A. Uh-huh.

15 Q. After that conversation and after Mr. Ray
16 responded, do you recall what happened next?

17 A. The sweat lodge continued like nothing
18 was wrong.

19 Q. Was anybody brought out after you heard
20 that conversation?

21 A. When the next door was open.

22 Q. But before that final round after you
23 heard the comments about someone being unconscious,
24 was anybody brought out before that next round
25 started?

1 A. No. People -- like, there was some
2 people who came out on their own. But the people
3 that were unconscious did not leave.

4 Q. And, Sara, outside after the ceremony was
5 over, you have testified that you saw CPR being
6 performed. Do you recall how many people you saw
7 who were getting CPR?

8 A. At least three. I remember seeing three
9 people on the automatic CPR things. That's the
10 only people I saw.

11 Q. And did you see other people being tended
12 to by paramedics?

13 A. Yes.

14 Q. And the jury has heard testimony about a
15 ceremony at Angel Valley on Saturday to commemorate
16 what had happened. Were you there for that?

17 A. Yes, I was. Afterwards?

18 Q. When there was a burning of the --

19 A. Yes. We tore down the sweat lodge and
20 burned it.

21 Q. And do you recall how long that ceremony
22 lasted for?

23 A. About an hour or so.

24 Q. Were you part of the taking down of the
25 sweat lodge?

1 A. Yes.

2 Q. And were you there when the kiva or the
3 frame was burned?

4 A. Yes.

5 Q. And were you around the fire that was
6 used to burn the kiva?

7 A. Yes.

8 Q. Did you ever feel sick after being near
9 that fire?

10 A. No.

11 Q. Do you know, Sara, what happened to the
12 rocks or the grandfathers that were inside the pit
13 inside Mr. Ray's sweat lodge ceremony?

14 A. No. I can't recall.

15 Q. Do you recall if they were at the scene
16 when you had the ceremony a couple days later?

17 MR. KELLY: Your Honor, objection. She
18 doesn't recall. It's leading.

19 THE COURT: Sustained.

20 Q. BY MS. POLK: I want to ask you a couple
21 questions about 2008. In 2008 were you living at
22 Angel Valley?

23 A. Yes.

24 Q. And in the house that you've talked
25 about?

1 **A. No. Me and my dad were living in a**
2 **trailer. It was still on the property, but we were**
3 **just staying on the trailer.**

4 **Q.** Have you ever yourself been inside a
5 sweat lodge for a ceremony?

6 **A. No.**

7 **Q.** And have you been present on the outside
8 for other sweat lodge ceremonies?

9 **A. Just James Ray's.**

10 **Q.** And how many of James Ray's ceremonies
11 have you been present on the outside for?

12 **A. Two.**

13 **Q.** One was in 2009. When was the other one?

14 **A. 2008.**

15 **Q.** And 2008, was that ceremony at the same
16 location as the 2009 ceremony?

17 **A. Yes.**

18 **Q.** Were your parents also there?

19 **A. Yes.**

20 **Q.** And did you have duties for that
21 ceremony?

22 **A. I was just kind of there to help like I**
23 **was for the 2009. I mean, I wasn't there the**
24 **whole, entire time. But I would come and go and**
25 **help people as needed. I'd get them water and**

1 **towels and blankets.**

2 **Q.** And how did you know what to do for
3 people?

4 **A. I just -- I asked them what they needed.**
5 **The people who were in distress, I asked them what**
6 **they needed. If they asked for water, blanket, I'd**
7 **go get it for them.**

8 **Q.** How did you know to even do that?

9 **A. I just -- I don't know. I thought I'd**
10 **help, and I got them what they wanted or what they**
11 **were asking for.**

12 **Q.** And that was the first time you had been
13 at a sweat lodge?

14 **A. Yes.**

15 **Q.** Did you know what to expect?

16 **A. No.**

17 **Q.** For the 2008 ceremony, were you at the
18 door as you were for 2009?

19 **A. Not the whole time. No. I'd peek in and**
20 **kind of walk off and go help somebody. But I**
21 **wasn't sitting there at the door the whole time.**

22 **Q.** Where would you say you were most of the
23 time?

24 **A. I was talking to the people that were**
25 **outside of the sweat lodge just, like, near the**

1 **tarps and kind of next to the fire. I'd talk to my**
2 **dad a little bit. Just kind of hang out around**
3 **there.**

4 **Q.** And talking, then, specifically
5 about 2008 and Mr. Ray's sweat lodge ceremony,
6 during the time you were there and as a layperson,
7 did you ever see anyone who appeared not to be
8 feeling well?

9 **A. Yes. There was this one lady who tried**
10 **to leave the sweat lodge. And she started out she**
11 **was crawling out. And then she stood up. When she**
12 **stood up, she fell back down and landed right on**
13 **her face and scraped up the side of her face.**

14 **Q.** Do you recall about what round that was?

15 **A. No.**

16 **Q.** Did you later see that lady?

17 **A. I saw her the next day.**

18 **Q.** And did you see what her face looked like
19 then?

20 **A. Yeah. The whole side of her face was**
21 **scratched up.**

22 MR. KELLY: Object based on relevance.

23 THE COURT: Sustained.

24 **Q.** BY MS. POLK: Do you recall seeing
25 anybody else other than that lady in 2008?

1 **A. Yes. There was this one girl who kept,**
2 **like, her whole body was just shaking violently.**
3 **She -- she was just laying on the ground and**
4 **shaking violently really bad.**

5 **Q.** Did you go to her?

6 **A. There were other people there helping**
7 **her. So I just kind of stood back and watched. I**
8 **didn't know what to do. I didn't even know what**
9 **was going on with her. I just kind of watched and**
10 **was there to help if they needed it.**

11 **Q.** Do you recall anybody else specifically?

12 **A. There was another guy who kept saying**
13 **that he didn't want to die. Just kept yelling, I**
14 **don't want to die. I don't want to die.**

15 **Q.** Do you recall what happened to him or who
16 tended to him?

17 **A. I don't remember.**

18 **Q.** For the people -- did you actually assist
19 people in 2008?

20 **A. Yes.**

21 **Q.** And with regard to the people you
22 actually assisted, what did you observe about them?

23 **A. They were exhausted. Some of them were**
24 **throwing up. Some of them had their eyes rolling**
25 **back in their heads, and there were some that were**

1 **okay, though, too.**

2 **Q.** Thank you, Sara.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Ms. Polk.

5 Mr. Kelly.

6 MR. KELLY: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. KELLY:

9 **Q.** Sara, how are you doing today?

10 **A.** Okay.

11 **Q.** You and I met about a month ago. Do you
12 recall that?

13 **A.** Yes.

14 **Q.** And we've never talked about this case
15 together, though; correct?

16 **A.** Correct.

17 **Q.** And I asked you about a month ago just to
18 relax and tell this jury the truth during my
19 cross-examination.

20 Will you do that?

21 **A.** Yep.

22 **Q.** Okay. You're 19 years old now?

23 **A.** Nineteen.

24 **Q.** Where do you live?

25 **A.** I live on a houseboat at Lake Pleasant.

1 **Q.** That sounds like fun. Are you living
2 with your mom and dad?

3 **A.** No.

4 **Q.** When did you move out of your mom and
5 dad's home?

6 **A.** I can't remember exactly. I got -- I'm a
7 manager at Lake Pleasant for a boat rental company,
8 and we have extra houseboats. I just kind of stay
9 on there and go back to my parents' house
10 sometimes. I'm just kind of bouncing back and
11 forth between my parents' house and the houseboat.

12 **Q.** Your mom and dad live outside of
13 Wickenburg pretty close to Lake Pleasant?

14 **A.** Yes.

15 **Q.** How long have you had this job at Lake
16 Pleasant?

17 **A.** Since January.

18 **Q.** Do you go to college?

19 **A.** No.

20 **Q.** You graduated from high school a couple
21 years ago?

22 **A.** No. I actually did not graduate.

23 **Q.** Have you gotten your GED?

24 **A.** No.

25 **Q.** Back in about 2006 and 2007, you lived

1 with your mom and dad; correct?

2 **A.** Yes.

3 **Q.** And you and your mom and dad moved onto
4 the Angel Valley property?

5 **A.** Me and my dad moved first. It was my dad
6 and I moved up there. And then a couple months
7 later, my mom moved up there.

8 **Q.** What year do you think that was?

9 **A.** Around 2006 and '07. It was a long
10 process. We didn't just move up there right away.
11 It was my dad was up there for a few months. And
12 then I'd go up there for a few months, and I'd go
13 back down -- you know -- just kind of back and
14 forth for a while.

15 **Q.** And I think your mother was working for
16 an insurance company?

17 **A.** Yes.

18 **Q.** And your dad at one point in time worked
19 for Angel Valley; correct?

20 **A.** Yes.

21 **Q.** And you met Michael and Amayra Hamilton?

22 **A.** Oh, yeah.

23 **Q.** You know them?

24 **A.** Uh-huh.

25 **Q.** Have you spoke to them since October 8,

1 2009?

2 **A.** Yes.

3 **Q.** Of course, you've talked to your mom and
4 dad; correct?

5 **A.** Yes.

6 **Q.** You met a lady about the name of Fawn
7 Foster; correct?

8 **A.** Yes.

9 **Q.** When did you first meet Fawn?

10 **A.** I don't remember when I first met her
11 exactly, but I met her at Angel Valley.

12 **Q.** And can you give us an idea. Was it
13 about 2006? 2007?

14 **A.** 2007.

15 **Q.** And your mom and Ms. Foster are pretty
16 good friends?

17 **A.** Yes.

18 **Q.** Now, I know you love your mom very much.
19 Correct?

20 **A.** Uh-huh. Yes.

21 **Q.** You know, this lady takes down everything
22 that you and I say. So it's important to respond
23 with words, not just nodding your head. Okay?

24 **A.** Okay.

25 **Q.** And it's also important that we don't

- 1 talk over one another because it makes it more
2 difficult for her. Okay?
- 3 **A. Okay.**
- 4 **Q.** You love your dad very much; correct?
- 5 **A. Yes.**
- 6 **Q.** And you and your mom and dad at one point
7 in time then lived in one of the cabins at Angel
8 Valley; correct?
- 9 **A. Well, we lived in a trailer for the first**
10 **while, and then there was a cabin on the -- on**
11 **Angel Valley. But it wasn't owned by Angel Valley.**
12 **It was a different owner. And we lived in that**
13 **cabin after we lived in the trailer.**
- 14 **Q.** So that would be -- your understanding is
15 back then sometime in 2007 or 2008, the Hamiltons
16 bought Angel Valley from someone else?
- 17 **A. No. There was -- there is a house in the**
18 **Angel Valley area, but it was a privately-owned**
19 **house, not owned by Angel Valley.**
- 20 **Q.** And during that time your mother, your
21 father and you and your brother lived in that
22 house.
- 23 **A. Not my brother.**
- 24 **Q.** The three of you lived in the house;
25 correct?

- 1 **A. Yes.**
- 2 **Q.** And that was sometime before October 8,
3 2009; correct?
- 4 **A. Yes.**
- 5 **Q.** During that time period did you have the
6 opportunity of meeting a fellow by the name of
7 Rotillo Vasquez?
- 8 **A. Yes.**
- 9 **Q.** Was Rotillo the landscaper at Angel
10 Valley?
- 11 **A. Yes.**
- 12 **Q.** Pretty nice guy?
- 13 **A. Yes.**
- 14 **Q.** Did you talk to him?
- 15 **A. Not very much. He didn't speak very well**
16 **English. I'd say hi and that's pretty much it.**
- 17 **Q.** What did you understand his job to be?
- 18 **A. Just maintenance, just pulling weeds and**
19 **taking care of landscaping.**
- 20 **Q.** During that time -- I asked you this --
21 you met Michael, Amayra Hamilton, Fawn Foster and
22 Rotillo; correct?
- 23 **A. Yes.**
- 24 **Q.** And your dad. What was he doing for a
25 living during that time period?

- 1 **A. For the first part I know he was**
2 **volunteering there. And then he actually did get**
3 **hired on. I'm not sure for what position. But**
4 **he'd go around and kind of do landscaping, do other**
5 **stuff like that as well. I don't really know what**
6 **he did.**
- 7 **Q.** Were you going to high school then?
- 8 **A. Yeah. I was going to high school then.**
- 9 **Q.** So I'm assuming during the winter you'd
10 leave every day and come back in the afternoon
11 after school?
- 12 **A. Yes.**
- 13 **Q.** And, of course, on weekends you would be
14 around the house?
- 15 **A. Weekends I would go down to Wickenburg.**
- 16 **Q.** And during this time period, were you
17 ever hired by Angel Valley in any capacity?
- 18 **A. No.**
- 19 **Q.** You helped out, I take it?
- 20 **A. I volunteered on certain things. But I**
21 **was never hired on or paid for any reason.**
- 22 **Q.** What would you volunteer to do?
- 23 **A. I -- the only things I really volunteered**
24 **with was the James Ray sweat lodges.**
- 25 **Q.** Anything else in regards to keeping the

- 1 cabins clean or keeping the -- doing the
2 landscaping, anything like that?
- 3 **A. No.**
- 4 **Q.** You mentioned that you were present
5 in 2008 for a portion of the sweat lodge ceremony
6 conducted by James Ray International; correct?
- 7 **A. Yes.**
- 8 **Q.** So you were able to take a look at the
9 sweat lodge used during 2008; correct?
- 10 **A. Yes.**
- 11 **Q.** Did you help your dad build this sweat
12 lodge in 2008 or 2009?
- 13 **A. No.**
- 14 **Q.** Did you know that, in fact, he was the
15 one responsible for building it?
- 16 **A. I knew that he was -- got directions on**
17 **how to build it and that he was supposed to build**
18 **it. Yes.**
- 19 **Q.** And how did you know that?
- 20 **A. Just sitting around talking with him.**
- 21 **Q.** Did you know that your mom had done some
22 internet research on how to build a sweat lodge?
- 23 **A. No.**
- 24 **Q.** Were you ever present when your dad was
25 actually building the sweat lodge?

- 1 **A. Yes.**
 2 **Q.** Did you see him put together the kiva,
 3 the wooden part of it?
 4 **A. Parts of it.**
 5 **Q.** Did you see him put together the
 6 coverings over the top of the sweat lodge?
 7 **A. Yes.**
 8 **Q.** And do you know where he got those
 9 coverings?
 10 **A. From a storage shed that was there.**
 11 **It's, like, a little cabin, had some blankets in**
 12 **it.**
 13 **Q.** I'm sorry. I interrupted you. Makes it
 14 hard.
 15 Did you ever go in that storage shed?
 16 **A. I peeked in there, but I never really**
 17 **went in there. No.**
 18 **Q.** When you peeked in there, what did you
 19 see?
 20 **A. Tarps and blankets and wood and lots of**
 21 **spider webs.**
 22 **Q.** Was it neat and clean? swept out?
 23 **A. No.**
 24 **Q.** When your dad was covering the sweat
 25 lodge in 2009 or 2008, did you know that there was

- 1 a weed barrier under the sand?
 2 **A. A what?**
 3 **Q.** Some type of weed barrier, whether it's
 4 plastic or some type of fabric, under the sand?
 5 **A. No.**
 6 **Q.** When he covered the sweat lodge with the
 7 materials, what materials did you see?
 8 **A. I saw a tarp and blankets.**
 9 **Q.** Did you see the blankets layered on first
 10 and then the big rubber deal put over the top?
 11 **A. I don't remember exactly how it was all**
 12 **covered up. I just know that there were tarps and**
 13 **blankets on it.**
 14 **Q.** And did you -- were you able to tell when
 15 you were there that the final covering was a big
 16 rubber deal that went over the entire sweat lodge?
 17 **A. I don't recall.**
 18 **Q.** Were you able to recall, then, that your
 19 dad took rocks -- he and Rotillo -- and put around
 20 the edge of the sweat lodge all the way around the
 21 base -- the big rocks to seal the rubber deal down
 22 to the dirt?
 23 **A. Yes.**
 24 **Q.** And, of course, you didn't know then that
 25 under that dirt was this other fabric; right?

- 1 **A. No. I did not know that.**
 2 **Q.** And, Sara, you would agree with me that
 3 when you saw your dad and other people building
 4 this sweat lodge, you never saw James Ray helping
 5 them; correct?
 6 **A. No. He was not helping them.**
 7 **Q.** And you know that the sweat lodge was
 8 there and was the responsibility of Angel Valley;
 9 correct?
 10 **A. Wait. What?**
 11 **Q.** Okay. You and your dad are living at
 12 Angel Valley in a trailer; right?
 13 **A. Yes.**
 14 **Q.** And that's on Angel Valley; correct?
 15 **A. Yes.**
 16 **Q.** And you know that Amayra and Michael
 17 Hamilton own Angel Valley?
 18 **A. Yes.**
 19 **Q.** And there are cabins and the Crystal
 20 Hall; correct?
 21 **A. Yes.**
 22 **Q.** And there is the sweat lodge?
 23 **A. Yes.**
 24 **Q.** And you told us on direct that you would
 25 walk by it and see it every day; correct?

- 1 **A. Yes.**
 2 **Q.** So the question was, you knew that sweat
 3 lodge belonged to Angel Valley; correct?
 4 **A. Yes.**
 5 **Q.** Now, I take it that you and your mom and
 6 dad are very close?
 7 **A. Yes.**
 8 **Q.** Talk about all the problems that young
 9 ladies have in life?
 10 **A. Yes.**
 11 **Q.** Talk about your problems, whether it be
 12 at work, at school, with your friends, et cetera?
 13 **A. Yes.**
 14 **Q.** And on October 8, 2009, you were present
 15 during this event; correct?
 16 **A. Yes.**
 17 **Q.** And you told us on direct, and I
 18 understand it's very difficult, that you observed
 19 people who were very ill; correct?
 20 **A. Yes.**
 21 **Q.** And afterwards, then, you went back to
 22 your home; right?
 23 **A. Yes.**
 24 **Q.** And you've lived with your mom and dad
 25 since -- until recently started taking care of

1 these house boats; correct?
 2 **A. No. I've lived with my boyfriends and**
 3 **stuff like that. So I haven't been living with**
 4 **them the whole time.**
 5 **Q.** But you've seen them; right?
 6 **A. Oh, yes.**
 7 **Q.** You're a close family?
 8 **A. Very close.**
 9 **Q.** And you talk about things that are
 10 important in your life; correct?
 11 **A. Yes.**
 12 **Q.** Now, after October 8, 2009, did your home
 13 have a TV in it?
 14 **A. It had a TV. Yes.**
 15 **Q.** And on TV did you see any of the media
 16 coverage that was associated with this case?
 17 **A. No. I didn't watch the news or anything.**
 18 **I -- I just tried to not even think about it, hear**
 19 **about it or anything.**
 20 **Q.** So you didn't watch any of the media
 21 coverage, like when the Dr. Beverly Bunn may have
 22 made a statement?
 23 **A. I don't even know who that is. No.**
 24 **Q.** Well, some lady who might have been
 25 talking to the reporters?

1 **A. No.**
 2 **Q.** You know Mark Rock?
 3 **A. No.**
 4 **Q.** You don't?
 5 **A. I don't recall the name. No.**
 6 **Q.** Okay. Do you remember any men with bald
 7 heads talking on the TV about what happened?
 8 **A. Like I said, I didn't really watch the**
 9 **TV. Not the news. I mean, I watch TV but not the**
 10 **news.**
 11 **Q.** Okay. And you understand that there was
 12 a lot of media coverage about this event after it
 13 happened; correct?
 14 **A. Yeah. I heard about it. Yes.**
 15 **Q.** And you heard about it from your mom and
 16 dad?
 17 **A. Just not necessarily just them. But I**
 18 **heard from other people because I lived there. And**
 19 **people at my high school knew I lived there and**
 20 **were like, what happened and this and that.**
 21 **Q.** I mean, you're living in Angel Valley.
 22 Here is one of the biggest media events in the
 23 history of Yavapai County, and you're going to high
 24 school in Sedona. You must have heard something
 25 about what happened; right?

1 **A. A little bit. Yeah.**
 2 **Q.** And you and your family are close. So
 3 did you and your mom and dad talk about what
 4 happened?
 5 **A. Slightly. But I mean, like, I've never**
 6 **really talked about it. I've tried not even to**
 7 **think about it. Just kind of always shut it out in**
 8 **my mind.**
 9 **Q.** Gosh. This is first time in your life,
 10 the only time in your life, that you saw a person
 11 who had died; correct?
 12 **A. Yes.**
 13 **Q.** And that's very difficult; right?
 14 **A. Yes.**
 15 **Q.** And you didn't talk to your mom about
 16 that?
 17 **A. No.**
 18 **Q.** Or your dad?
 19 **A. No.**
 20 **Q.** And, you know, I saw your mom out in the
 21 parking lot talking to you today during lunch.
 22 **A. Yes.**
 23 **Q.** Did you talk about your testimony?
 24 **A. No.**
 25 **Q.** Fawn Foster is a good friend of your

1 mom's; right?
 2 **A. Yes.**
 3 **Q.** And you know Fawn pretty well; correct?
 4 **A. Yes.**
 5 **Q.** You know she works at Angel Valley?
 6 **A. Yes.**
 7 **Q.** Did you ever speak with Fawn about what
 8 happened on October 8?
 9 **A. No. I mean, we had little discussions**
 10 **like, are you okay? And I'd say, yeah. I'm okay.**
 11 **But that's all I've ever really said about it.**
 12 **Q.** Did you know, Sara, that on April 1st of
 13 this year that Ms. Foster testified in front of
 14 this jury?
 15 **A. No.**
 16 **Q.** Did you talk to her since that date?
 17 **A. Yes.**
 18 **Q.** Have you talked to her about this trial
 19 since that date?
 20 **A. No.**
 21 **Q.** Did you know that your mom testified
 22 about five days later on? I don't know the exact
 23 date. But it was the following Tuesday?
 24 **A. Yeah. I knew she was testifying.**
 25 **Q.** All right. Did you know -- or did you

1 talk to her since then?

2 **A. I've talked to her since then. Yes.**

3 **Q.** And did you speak about this case?

4 **A. No.**

5 **Q.** And correct me if I'm wrong, but this is

6 the first time that you've ever testified in a

7 courtroom; right?

8 **A. Yes.**

9 **Q.** It's the first time that you've ever been

10 on TV; correct?

11 **A. Yes.**

12 **Q.** And you haven't spoke to your mom or dad

13 about that; correct?

14 **A. Correct.**

15 **Q.** Pardon me?

16 **A. Correct.**

17 **Q.** I want to take you to October 8, 2009.

18 You couldn't remember what you did during the

19 morning of October 8th; correct?

20 **A. Correct.**

21 **Q.** Or the afternoon of October 8th; correct?

22 **A. I remember, like, going back and forth**

23 **between my house and the sweat lodge while my dad**

24 **was preparing the fire and the heating the rocks**

25 **up.**

1 **Q.** That's all you remember?

2 **A. Yeah. Just kind of walking around.**

3 **Q.** October 8 was a Thursday, I believe.

4 Does that sound right to you?

5 **A. I don't know.**

6 **Q.** Which would make October 7th a Wednesday.

7 Do you know what you did the Wednesday before the

8 Thursday of the sweat lodge?

9 **A. No.**

10 **Q.** Any idea?

11 **A. No.**

12 **Q.** What about the day prior to that? Any

13 day during that week do you remember what you were

14 doing?

15 **A. I -- I don't know. Probably going to**

16 **school.**

17 **Q.** And I was going to ask you. Were you

18 going to Sedona High School back during October?

19 **A. I was going to Cottonwood High School,**

20 **but yeah. I was going to school.**

21 **Q.** What grade would you have been in?

22 **A. Tenth, I think I was. Yeah. Tenth.**

23 **Q.** So the sweat lodge was on October 8th,

24 which was a Thursday. Did you go to school

25 October 9th, the Friday after the sweat lodge?

1 **A. I don't recall.**

2 **Q.** What about the next week? Do you recall

3 being in school?

4 **A. No. Actually, the day after it happened,**

5 **I moved back to Wickenburg. After the sweat lodge**

6 **happened, I moved back to Wickenburg. I didn't**

7 **want to be in Angel Valley anymore after that.**

8 **Q.** So this was so upsetting to you, you

9 actually wanted to get out of Angel Valley;

10 correct?

11 **A. Yes.**

12 **Q.** And, again, you didn't talk to your mom

13 and dad about that; correct?

14 **A. Correct.**

15 **Q.** So going back to October 8th, you don't

16 have any recollection as to what happened before

17 the sweat lodge other than your dad was building

18 the fire and heating the rocks; correct?

19 **A. Say that again.**

20 **Q.** I think you told us that on October 8th

21 you remember your dad starting the fire and

22 beginning to heat the rocks. Correct?

23 **A. Correct.**

24 **Q.** And my question was, can you tell us

25 anything else about what you did on October 8th

1 before the sweat lodge started?

2 **A. No. I was -- I was kind of just trotting**

3 **around waiting for the sweat lodge to start.**

4 **Q.** And didn't you invite a friend of yours,

5 Shawna Bowen, to come that afternoon?

6 **A. Yes.**

7 **Q.** Who is Shawna Bowen?

8 **A. A family friend.**

9 **Q.** How long have you known her?

10 **A. From today a few years now. I can't**

11 **remember the exact day I met her. I've known her**

12 **for few months before that. She had seen James**

13 **Ray's work before, and she kind of wanted to come**

14 **down and see what it was like. So I invited her**

15 **down.**

16 **Q.** How old is Shawna?

17 **A. I don't know. Older.**

18 **Q.** Your age or twice your age?

19 **A. Closer to my parents' age than my age.**

20 **Q.** So you were 17 at the time, and you

21 invited this older lady down to watch a James Ray

22 International event?

23 **A. Yes.**

24 **Q.** Why?

25 **A. Because she was interested in James Ray**

1 **and the work that he's done before. And she said**
 2 **that she actually met him at a pizza parlor one**
 3 **time, something like that. She just wanted to see**
 4 **what it was about.**

5 Q. Now, you told us on direct you had never
 6 personally walked up and met Mr. Ray; right?

7 A. Correct.

8 Q. And you hadn't had any one-on-one
 9 conversations with him during the week of October,
 10 2009; correct?

11 A. Correct.

12 Q. Did you know that James Ray International
 13 had a seminar going on that week before the sweat
 14 lodge?

15 A. Yes.

16 Q. Did your mom or dad, someone like that,
 17 tell you that James Ray was on the Angel Valley
 18 property?

19 A. Yes.

20 Q. So you knew he was there?

21 A. Yes. I knew he was there.

22 Q. But you had never personally met him;
 23 correct?

24 A. Correct.

25 Q. And so when he starts the ceremony and

1 the door is opened, you told us that you reached in
 2 and put your hand on his head?

3 A. Yes.

4 Q. And you hadn't met him; correct?

5 A. Correct.

6 Q. And then you reached in and you put your
 7 hand on the head of somebody else you didn't know;
 8 correct?

9 A. Correct.

10 Q. Now, I would take it that during this
 11 time your mom and dad are there; right?

12 A. Yes.

13 Q. And did your mom ask you to do that?

14 A. No.

15 Q. Your dad?

16 A. No.

17 Q. Ms. Foster?

18 A. No.

19 Q. So why did you do that?

20 A. Just to let them know that there was
 21 comfort and support.

22 Q. You were 17 at the time; correct?

23 A. Yes.

24 Q. When you first got to the sweat lodge,
 25 you told us that the first thing you did was help

1 other people put together the drinking water and
 2 fruit; correct?

3 A. I helped pour some water that was already
 4 there, but I didn't get it together.

5 Q. Here's my question: Who did that?

6 A. I don't know.

7 Q. Was it more than one person putting
 8 together what we've called the "comfort station"?

9 A. I don't know. By the time I got there,
 10 it was already set up.

11 Q. So once it's set up, then what you did is
 12 poured some water in some cups; correct?

13 A. Yes.

14 Q. And at that point in time who's there
 15 when you're doing that?

16 A. There was some people that were going to
 17 be in the sweat lodge started showing up and just
 18 waiting for everybody to start showing up. Some of
 19 the Dream Team was there.

20 Q. Let me rephrase my question. Who was
 21 there that you knew?

22 A. My mom and dad. And, I believe, Fawn was
 23 there. But they were -- Fawn was running around
 24 doing other things. So she was there on and off.

25 Q. Now, you told us that at the beginning,

1 the participants went to a little fire, the
 2 intentions fire, made a circle around it and were
 3 talking; right?

4 A. I don't remember them being around a
 5 fire. But they were in a circle all holding hands,
 6 and the fire was next to them. But they weren't
 7 circled around it.

8 Q. Sorry for interrupting you. What were
 9 they doing?

10 A. James was doing some kind of speech. He
 11 was saying something to them all. Just getting
 12 them all preped up and ready to go into the sweat
 13 lodge.

14 Q. And my question was, these people -- what
 15 were they doing? Do you know?

16 A. I don't know. They were talking about
 17 things. I really don't remember what they were
 18 doing exactly.

19 Q. And then after they're in the circle
 20 holding hands and Mr. Ray is speaking with them,
 21 and then what happens?

22 A. After they were done with that, they all
 23 lined up and went into the sweat lodge.

24 Q. When they all lined up and went into the
 25 sweat lodge, where were you at?

1 **A. Standing by the comfort zone watching**
 2 **them all just go into the sweat lodge.**
 3 **Q.** Where was your mom?
 4 **A. I don't recall.**
 5 **Q.** Where was your dad?
 6 **A. By the fire.**
 7 **Q.** And where was Fawn?
 8 **A. I don't recall.**
 9 **Q.** Once they're all in the sweat lodge and
 10 the door's closed, first round, where is your mom?
 11 **A. I don't remember where she was. But -- I**
 12 **don't remember.**
 13 **Q.** But your testimony is that you're by the
 14 door?
 15 **A. During the first round I was setting up**
 16 **water still for people when they come out. I was**
 17 **pouring water for them and just electrolytes and**
 18 **stuff like that just so when they did come out,**
 19 **they would have water to drink.**
 20 **Q.** Okay. So I'm clear, you were not by the
 21 door during the first round. Is that your
 22 testimony?
 23 **A. Correct.**
 24 **Q.** And you don't know where your mother was?
 25 **A. I don't remember where she was. No.**

1 **Q.** What about your dad?
 2 **A. I believe he was tending the fire.**
 3 **Q.** What about Fawn Foster?
 4 **A. I don't remember.**
 5 **Q.** What about Rotillo?
 6 **A. I don't know.**
 7 **Q.** And you told us on direct that no one
 8 told you what to do throughout the course of the
 9 ceremony; right?
 10 **A. Correct.**
 11 **Q.** So whatever you did, you just did on your
 12 own?
 13 **A. Yes.**
 14 **Q.** And you didn't have a specific job. You
 15 were just volunteering; right?
 16 **A. Correct.**
 17 **Q.** And one of the things you did is you said
 18 that you helped brush the ashes off the rocks;
 19 right?
 20 **A. Yes.**
 21 **Q.** And Ms. Polk had a photograph up here,
 22 which is 145 in evidence. And you told the jury it
 23 was right here; right?
 24 **A. Correct.**
 25 **Q.** Who else was helping you?

1 **A. I would brush the rocks off, and my dad**
 2 **would bring them over. We only had one brush, so I**
 3 **was the one brushing the rocks off.**
 4 **Q.** Were you the one brushing the rocks off
 5 each and every round?
 6 **A. No. I did it a couple times. Then I**
 7 **think my mom did it sometimes too.**
 8 **Q.** Rotillo?
 9 **A. I don't remember what he did.**
 10 **Q.** How many rounds were you brushing the
 11 rocks off?
 12 **A. I can't recall exactly.**
 13 **Q.** Would you agree with me that if you're
 14 brushing the rocks off, then you're not next to the
 15 door?
 16 **A. Yes.**
 17 **Q.** Would you agree with me that you brushed
 18 the rocks off when the rocks are taken out of the
 19 fire in preparation to be put into the lodge?
 20 **A. Yes.**
 21 **Q.** So when you told the jury that you were
 22 in front of the door for each round, I think you're
 23 correcting that now.
 24 **A. I was there in front of door every time**
 25 **it was opened. And then I'd help the people come**

1 **out. And after everybody came out, there would be**
 2 **some people, like, laying over here. And then**
 3 **after they were done with that, sometimes I would**
 4 **go help my dad brush off the rocks. Other times I**
 5 **would tend to the people.**
 6 **Q.** My question was, I thought -- and if I
 7 misunderstood your testimony, I apologize. But I
 8 thought you said you were by the door each round
 9 and you could hear what was going on inside the
 10 sweat lodge and you could see Mr. Ray. I thought
 11 that was your testimony.
 12 **A. I could hear anything that was going on**
 13 **in there from where I was brushing off the rocks.**
 14 **Q.** Okay.
 15 **A. And yes. I did see James Ray every time**
 16 **the door was opened.**
 17 **Q.** From where the rocks were being brushed?
 18 **A. No. From the entrance.**
 19 **Q.** So let me get it straight. Several
 20 rounds, we don't know how many, you were brushing
 21 off rocks; right?
 22 **A. Yes.**
 23 **Q.** Several rounds you were helping people?
 24 **A. Yes.**
 25 **Q.** And several rounds you were by the door?

- 1 A. Yes.
- 2 Q. Am I correct?
- 3 A. Yes.
- 4 Q. And you don't know where your mother was?
- 5 A. **I wasn't concerned with her. I was**
- 6 **concerned with all of the other people that were in**
- 7 **distress. I knew she was fine, so I didn't pay**
- 8 **attention to what she was doing or where she was**
- 9 **at.**
- 10 Q. You know your dad is a certified
- 11 emergency medical first responder?
- 12 A. Yes.
- 13 Q. And you know that throughout the course
- 14 of these rounds, seven or eight rounds of the sweat
- 15 lodge, your dad didn't render aid to anyone over
- 16 here; right?
- 17 A. **I really don't remember if he helped**
- 18 **people or not.**
- 19 Q. Well, let me rephrase the question.
- 20 During the sweat lodge ceremony, the certified
- 21 medical first responder did not help any of the
- 22 people. You didn't see him help anyone; correct?
- 23 A. **Correct.**
- 24 Q. He was tending the fire; correct?
- 25 A. Yes.

- 1 Q. He was taking the rocks out of the fire;
- 2 correct?
- 3 A. **Correct.**
- 4 Q. Now, I notice in Exhibit 145 that -- I
- 5 believe this is your mom. Right?
- 6 A. Yes.
- 7 Q. And she's sitting right in front of door;
- 8 correct?
- 9 A. **Correct.**
- 10 Q. And you told us on direct that between a
- 11 round, preliminary round, Mr. Ray accidentally spit
- 12 on your mom's hand; right?
- 13 A. Yes.
- 14 Q. And he apologized profusely; correct?
- 15 A. **Correct.**
- 16 Q. Now, I would take it that's something
- 17 that your mom would never forget?
- 18 A. **I don't know.**
- 19 Q. Somebody spits in your hand. That's
- 20 something you're likely to remember; correct?
- 21 A. Yes.
- 22 Q. I mean, that would be an event that would
- 23 be easy to remember; correct?
- 24 A. **Correct.**
- 25 Q. Ms. Polk asked you a question about

- 1 first-aid kits and walkie-talkies. You don't have
- 2 any idea whether there was a first-aid kit;
- 3 correct?
- 4 A. **I don't know.**
- 5 Q. You told us on direct that -- are you
- 6 okay?
- 7 A. **Yeah.**
- 8 Q. You told us on direct that each round you
- 9 would fill the buckets with water. Do you recall
- 10 that?
- 11 A. **Yes.**
- 12 Q. So, again, you were helping people for
- 13 several rounds; correct?
- 14 A. **Correct.**
- 15 Q. You were by the door for several rounds;
- 16 correct?
- 17 A. **Uh-huh. Correct.**
- 18 Q. You were brushing off rocks; correct?
- 19 A. **Correct.**
- 20 Q. And you were putting water in the
- 21 buckets; correct?
- 22 A. **Correct. But we would fill the buckets**
- 23 **up with water after the door has been closed.**
- 24 Q. I understand. And, again, you don't
- 25 remember exactly what your mother was doing;

- 1 correct?
- 2 A. **Correct.**
- 3 Q. You don't remember exactly what your dad
- 4 was doing except tending the fire; correct?
- 5 A. **Correct.**
- 6 Q. You don't remember what Rotillo was
- 7 doing; correct?
- 8 A. **Correct.**
- 9 Q. Was Rotillo there?
- 10 A. **I don't know.**
- 11 Q. What about Fawn Foster?
- 12 A. **I remember her being there.**
- 13 Q. Where was she?
- 14 A. **I don't know. Everything was all over**
- 15 **the place. There were people everywhere. So, I**
- 16 **mean, I wasn't just focused on that one person and**
- 17 **worried about what that one person was doing at all**
- 18 **times.**
- 19 Q. There were people everywhere?
- 20 A. **Yes. There were people -- like, the**
- 21 **Dream Team was outside. And there were people**
- 22 **coming out of the sweat lodge and then people going**
- 23 **back in. And I wasn't -- all my attention wasn't**
- 24 **focused on just what everybody was doing. My focus**
- 25 **was -- my attention was focused on how can I help**

1 **the people in distress.**

2 **Q.** And I guess that's kind of a vague
3 question when -- let's break it down. You would
4 agree with me that these people who went into the
5 sweat lodge went in there by their own choice;
6 correct?

7 **A. Correct.**

8 **Q.** No one pushed them in; correct?

9 **A. Correct.**

10 **Q.** No one took them by the arm and drug them
11 into the sweat lodge; correct?

12 **A. Correct.**

13 **Q.** You would agree with me that whenever a
14 person wanted to leave the sweat lodge, he or she
15 would leave the sweat lodge; correct?

16 **A. Correct.**

17 **Q.** And you'd also --

18 **A. If they were able to.**

19 **Q.** Pardon me?

20 **A. If they were able to.**

21 **Q.** If they were able to?

22 **A. Like, on their own.**

23 **Q.** So during the first round --

24 **A. Uh-huh.**

25 **Q.** Before the first round, you saw the

1 people go in the sweat lodge; correct?

2 **A. Correct.**

3 **Q.** You saw people come out of the sweat
4 lodge at the end of the first round; correct?

5 **A. Correct.**

6 **Q.** No one stopped them from doing that;
7 correct?

8 **A. Correct.**

9 **Q.** You even saw people who would come out
10 and then go back in; correct?

11 **A. Yes.**

12 **Q.** And you told us that what Mr. Ray did was
13 he would encourage them not to leave; correct?

14 **A. Correct.**

15 **Q.** He would tell them, if you want to leave,
16 only leave when the gate was opened; correct?

17 **A. Correct.**

18 **Q.** And you said he was not really giving
19 them any crap -- well, I guess a little bit, in
20 that regard; correct?

21 **A. Correct.**

22 **Q.** That was your testimony a couple hours
23 ago; correct? And you heard him say, you're more
24 than your body; correct?

25 **A. Correct.**

1 **Q.** Now, when these people are coming out, I
2 take it from your testimony, you're saying some of
3 them are in some type of distress in your opinion;
4 correct?

5 **A. Yes.**

6 **Q.** And you're helping them; correct?

7 **A. As much as I can.**

8 **Q.** But as you help them, when it's time to
9 brush off the rocks, you'll go brush off the rocks;
10 right?

11 **A. I mean, I didn't do it every round. I**
12 **did it some rounds when there was no one -- when**
13 **the people who were out of there were okay and**
14 **there were other people taking care of it. I would**
15 **go over, start talking to my dad and brushing off**
16 **rocks for a minute.**

17 **Q.** Or you would go over and fill buckets
18 with water; correct?

19 **A. No. I wouldn't fill the buckets up with**
20 **water until after everybody who was going to be in**
21 **the sweat lodge was back in and everybody who was**
22 **out was out.**

23 **Q.** Or you would stay by the door; correct?

24 **A. Correct.**

25 **Q.** And whenever you brushed off the rocks,

1 filled up the buckets or sat in front of the door,
2 you would leave these people; right?

3 **A. Yes.**

4 **Q.** And your mom didn't go over and help
5 those people; correct?

6 **A. I believe she did.**

7 **Q.** Your dad didn't; correct?

8 **A. I can't recall what he did.**

9 **Q.** Rotillo didn't; correct?

10 **A. I can't recall what he did.**

11 **Q.** Fawn didn't; correct?

12 **A. I can't recall what she did.**

13 **Q.** I'm talking about helping. I'm not
14 talking about giving them a drink of water or
15 cooling them off. I'm talking about rendering some
16 type of emergency medical aid. And that wasn't
17 taking place; correct?

18 **A. Correct.**

19 **Q.** Now, you told us on direct that at one
20 point in time you happened to be in front of door,
21 and you look in, and you see a fellow stumble and
22 fall into the hot rock pit; correct?

23 **A. He was crawling out towards the entrance.**
24 **And he went to put his arm down like he was before,**
25 **and it just went right into the pit.**

1 Q. And when he did, he burned himself
2 because those rocks are hot?
3 A. Yes.
4 Q. And then he crawled out and was outside?
5 A. Yes.
6 Q. And you said that he put his arm in a
7 bucket of water.
8 A. Yes.
9 Q. Where did the water come from?
10 A. **Buckets that we were using to put onto**
11 **the rocks, The buckets there. He put his arm in**
12 **one of those buckets.**
13 Q. And the reason you do that is kind of the
14 first aid for treating a burn? You understand
15 that? It helps it; correct?
16 A. Correct.
17 Q. You've burned yourself, haven't you?
18 A. Yes.
19 Q. Put cold water and it feels better;
20 right?
21 A. Yes.
22 Q. If I understand this correctly, you look
23 in the door. You see him crawling along. He puts
24 his arm in the hot rocks. And I imagine he
25 scurries out pretty quick then sticks his arm in

1 the bucket?
2 A. **That's not where he went right after**
3 **that. He came out and somebody brought a bucket of**
4 **water over to him.**
5 Q. Okay. Who brought the bucket over to
6 him?
7 A. **I don't recall.**
8 Q. Do you remember a lady by the name
9 of -- did you ever meet somebody by the name of
10 Melinda Martin?
11 A. **I met a lot of people that day. I don't**
12 **remember names very well.**
13 Q. Could it have been Melinda Martin?
14 A. **I don't know. It could have been.**
15 Q. I'm going to rephrase my question.
16 Was it someone you didn't know?
17 A. **Yes. I mean, I don't remember who**
18 **brought the bucket over. So I don't know.**
19 Q. It was not Fawn Foster because you know
20 Fawn; right?
21 A. **It could have been Fawn. But what I'm**
22 **saying is I don't -- I did not see who brought the**
23 **bucket of water over.**
24 Q. But, to your knowledge, it was one of
25 these buckets that was used to put water on the

1 rocks?
2 A. **I just know that he had his arm in a**
3 **bucket of water.**
4 Q. And you know that he crawled out of the
5 tent, and then someone came up to him and gave him
6 the bucket of water. That's your testimony?
7 A. Yes.
8 Q. And I believe you said that you were on
9 this occasion right by the door so you had a good
10 view at this guy stumbling onto the hot rocks.
11 Right?
12 A. Correct.
13 Q. You had a good view of him crawling out
14 before he put his water -- his arm in the bucket;
15 correct?
16 A. Correct.
17 Q. And he crawled out on his own; correct?
18 A. Yes.
19 Q. And when people came out, you told us on
20 direct that you would help anyone who came out.
21 You'd hosed them off and give them cups of water,
22 and some of them would dump it on their heads;
23 correct?
24 A. Correct.
25 Q. Now, when you saw the man put his arm on

1 the hot rocks, was that an indication to you that
2 something wasn't right?
3 A. **I wasn't sure if he was okay or what was**
4 **wrong with him. I just thought that he may have**
5 **slipped in there or what. I didn't --**
6 Q. Well, my question is, when you saw that,
7 was that an indication to you that something wasn't
8 quite right?
9 A. Yes.
10 Q. Now, in addition to that, you told us
11 about a man coming out and screaming that he was
12 having a heart attack. Do you recall that?
13 A. Yes.
14 Q. Where was that or when was that in
15 relation to the fellow who put his arm on the hot
16 rocks?
17 A. **I can't recall.**
18 Q. So you don't know whether that was before
19 or after?
20 A. **No, I don't.**
21 Q. Describe that to us. I mean, that sounds
22 pretty bad.
23 A. **This guy was screaming at the top of his**
24 **lungs, I don't want to die. I think I'm having a**
25 **heart attack. He just kept repeating himself. I'm**

1 **having a heart attack. I don't want to die. I'm**
 2 **having a heart attack.**
 3 Q. And where did he go?
 4 A. **I don't remember where he went. He**
 5 **was -- I remember he was sitting in a chair, and**
 6 **there were people around him trying to calm him**
 7 **down.**

8 Q. Did you hear Mr. Ray say anything?

9 A. **I don't recall.**

10 Q. Did you hear Mr. Ray say anything to the
 11 guy who burned his arm on the rocks?

12 A. **I don't recall.**

13 Q. When the fellow came out and was yelling,
 14 I don't want to die, I'm having a heart attack, was
 15 that an indication to you that something was wrong?

16 A. **Yes.**

17 Q. And, again, when the fellow came out
 18 screaming, your dad, the certified medical
 19 technician -- he didn't go over and help; correct?

20 A. **I don't recall what he did.**

21 Q. He was tending to the fire; right?

22 A. **I don't recall.**

23 Q. So when -- at the end when Mr. Ray came
 24 out, you told us that he stood up, stretched and
 25 then took a seat?

1 A. **Correct.**

2 Q. So you didn't hear him make any
 3 statements?

4 A. **I remember he said something, but I can't**
 5 **tell you what that is exactly.**

6 Q. So I guess I'm going to ask you this
 7 question, Sara: You understand this is a very
 8 important proceeding. You understand that; right?

9 A. **Yes.**

10 Q. You understand it's very important that
 11 you tell the truth?

12 A. **Yes.**

13 Q. Not exaggerate?

14 A. **Uh-huh.**

15 Q. Pardon me?

16 A. **Yes.**

17 Q. That you tell this jury what you
 18 personally remember happened?

19 A. **Yes.**

20 Q. And are you having problems remembering
 21 everything that happened that day?

22 A. **I'm just -- I don't know what other**
 23 **people are doing. You keep asking me what other**
 24 **people are doing. And I remember what I was doing**
 25 **but not what everybody else was doing.**

1 Q. Okay. So I'm going to ask you a question
 2 about Mr. Ray. Because you told this jury about
 3 other statements that Mr. Ray supposedly made.

4 A. **Yes.**

5 Q. And now I'm asking you whether or not you
 6 remember him saying anything when he came out at
 7 the end. And you said, no, you don't remember;
 8 correct?

9 A. **I don't remember what he said. No, I**
 10 **don't.**

11 Q. And you haven't talked about this case
 12 with your mom?

13 A. **No.**

14 Q. With Fawn Foster?

15 A. **No.**

16 Q. Do you know you were interviewed by
 17 Detective Wendy Parkinson on October 8th, 2009?

18 A. **I don't remember who I was exactly**
 19 **talking to, but I remember I was interviewed. Yes.**

20 Q. By a lady?

21 A. **I don't remember.**

22 Q. You can't remember that?

23 A. **No.**

24 Q. And do you remember that Shawna Bowen was
 25 there too?

1 A. **Yes.**

2 Q. Do you remember that you and Shawna were
 3 the first people interviewed?

4 A. **I do not know that. No.**

5 Q. Did you know that that interview took
 6 place at 8:00 p.m. October 8th, 2009?

7 A. **I didn't know that's what time, but I**
 8 **knew it was at night. Yes.**

9 Q. Did you know that that interview was
 10 tape-recorded?

11 A. **Yes.**

12 Q. Do you recall Detective Parkison asking
 13 you a question, at what point did you guys notice
 14 people weren't doing well? Do you recall that?

15 A. **No.**

16 Q. Do you recall that your answer was -- do
 17 you recall the detective asking you, what was the
 18 first indicator to you that something wasn't right?

19 A. **No. I don't remember him asking me that**
 20 **question.**

21 MR. KELLY: Your Honor, I'd ask we be able to
 22 play a clip from Exhibit 690, which is time stamped
 23 2:50 to 3:08, Eighteen seconds, on Exhibit 693.

24 It's page 3, lines 5 through 9.

25 MS. POLK: No objection, Your Honor.

1 THE COURT: Then that excerpt may be played.
 2 (Exhibit 690 played.)
 3 MR. KELLY: May I approach the witness.
 4 Judge?

5 THE COURT: Yes.

6 Q. BY MR. KELLY: Sara, did you hear your
 7 voice on Exhibit 690?

8 A. Yes.

9 Q. I'm going to hand you Exhibit 693, which
 10 is a transcript. If you would like to refresh your
 11 recollection. Do you recall telling the
 12 detective -- I'm going to strike that question.

13 On October 8th, 2009, at 8:00 p.m., you
 14 told Detective Parkison, that the first indicator
 15 that something wasn't right was when you saw the
 16 person who was not breathing after the ceremony was
 17 over; correct?

18 MS. POLK: Your Honor, it's just not clear
 19 where this reference to a time comes from. If
 20 Mr. Kelly can establish the 8:00 p.m., where that
 21 comes from.

22 MR. KELLY: Judge, I will.

23 Q. Sara, I asked you a question about being
 24 interviewed on October 8th, 2009. Do you recall
 25 that?

1 A. Yes.

2 Q. Did you know that Detective Parkison of
 3 the Yavapai County Sheriff's Office was the one
 4 that interviewed you?

5 A. I didn't know her name. She told me at
 6 the time, but I don't remember it now, though.

7 Q. Did you know that the detective prepared
 8 a police report as a result of her investigation
 9 that day?

10 A. Yes.

11 Q. Did you know that the police report says
 12 that the interviews began at approximately 2000
 13 hours?

14 A. No.

15 Q. Do you know that 2000 hours would be
 16 8:00 p.m.?

17 A. Now I do.

18 Q. And do you know that in her police report
 19 she says, the following is a list of the people I
 20 interviewed in order? And Shawna and Sara Mercer
 21 are the first two people?

22 A. Okay.

23 Q. Now, my question was, on October 8th,
 24 2009, at about 8:00 p.m., you were interviewed;
 25 correct?

1 A. Yes.

2 Q. And when the detective --

3 MS. POLK: Your Honor, the state objects to a
 4 reference of 8:00 p.m. That simply indicates that
 5 the detectives began. There is no evidence that
 6 the interview of Sara was at 8:00 p.m.

7 THE COURT: Mr. Kelly, as to the form of the
 8 question, sustained.

9 MR. KELLY: Judge, I don't want to make a
 10 speaking objection.

11 THE COURT: Approach, please.

12 Please feel free to stand and stretch,
 13 ladies and gentlemen.

14 You may as well, Ms. Mercer, if you'd
 15 like to stand up.

16 (Sidebar conference.)

17 THE COURT: Okay.

18 MR. KELLY: Judge, what's necessary is a
 19 good-faith basis. And I'm using the state's police
 20 report that says the interviews began at 2000, and
 21 they started with these two young ladies -- or
 22 excuse me. Sara and Shawna. It's approximate.

23 THE COURT: And I sustained really very
 24 technically just regarding the form of the
 25 question. This is an appropriate questioning. But

1 with regard to the time and her knowing the exact
 2 time and that kind of thing, she apparently
 3 doesn't.

4 But Ms. Polk.

5 MS. POLK: Your Honor, I don't believe that
 6 there is a good-faith basis that the interview with
 7 Sara started at 8:00. What the police report says
 8 is the interviews began at approximately 2000
 9 hours, which would be 8:00, and ended at
 10 approximately 0200 hours.

11 The people were told that this would be a
 12 preliminary interview due to the late hour, many
 13 needing to catch a flight early the next day and
 14 the stress level that they were encountering. And
 15 then the following is a list of the people I
 16 interviewed in order and a summary.

17 Of what we know is that people were
 18 gathered in the dining hall and that there were
 19 some general comments that were made and some other
 20 things that took place. There is no good-faith
 21 basis to believe that Sara was at 8:00 a.m.

22 THE COURT: 8:00 p.m.

23 MS. POLK: 8:00 p.m. I'm sorry. She was
 24 interviewed sometime after 8:00 is the only thing
 25 that's a good-faith basis for and that she was the

1 first one interviewed.

2 THE COURT: And there is going to be
3 questioning or there can be questioning along this
4 line as long as it's clear, however it's done.
5 It's in the evening or it's after 8:00 or whatever.
6 But the questioning is appropriate, basically.

7 Ms. Polk, I don't know the significance
8 of being exactly at 8:00. Mr. Kelly, I don't know
9 the significance of it being exactly at 8:00. It's
10 a statement, apparently the first statement made.

11 MR. KELLY: Correct.

12 THE COURT: Okay. Thank you.

13 Mr. Kelly.

14 (End of sidebar conference.)

15 Q. BY MR. KELLY: Sara, you're not a police
16 officer; correct?

17 A. Correct.

18 Q. And you were not taking notes back on
19 October 8th, 2009; correct?

20 A. Correct.

21 Q. You weren't tape-recording any
22 interviews; correct?

23 A. No.

24 Q. And you understand that it's the State of
25 Arizona that has the burden of proof in this case

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1 and the ones required to record times and which
2 material facts occur?

3 A. Okay.

4 Q. My question to you is, you remember being
5 interviewed on October 8th, 2009; correct?

6 A. Yes.

7 Q. You don't know the exact time; right?

8 A. No.

9 Q. And the detective asked you what was the
10 first indicator to you that something wasn't right?

11 And you said, one of the guys just wasn't
12 breathing and he just had blue lips; correct?

13 A. Correct.

14 Q. Now, my point is, Sara, on that night,
15 October 8th, 2009, that was much closer to the
16 event than today is; correct?

17 A. Correct.

18 Q. That's before you had 17 months of
19 residing off and on with your mom and dad; correct?

20 A. No. We never really talked about the --

21 Q. Let me rephrase my question.

22 MS. POLK: Your Honor, if she could be allowed
23 to answer the question.

24 THE COURT: That was yes or no. So that's how
25 it would need to be answered. Overruled.

1 Q. BY MR. KELLY: This was the night of the
2 sweat lodge event; correct?

3 A. Correct.

4 Q. So the night of the accident; correct?

5 A. Correct.

6 Q. You told us that after you helped your
7 mom retrieve the people from the sweat lodge, you
8 went back to your house; correct?

9 A. Yes.

10 Q. And you came back down; correct?

11 A. Yes.

12 Q. And you were one of the first two people
13 interviewed; correct?

14 A. Correct.

15 Q. And you had not had a chance to speak to
16 your mom about what happened; correct?

17 A. Correct.

18 Q. You had not had a chance to speak to your
19 dad about what happened; correct?

20 A. Correct.

21 Q. You had not had a chance to speak with
22 Fawn Foster about what happened; correct?

23 A. Correct.

24 Q. You had not had a chance to take a look
25 at TV or radio about what happened; correct?

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1 A. Correct.

2 Q. And you had not had a chance to read any
3 newspaper articles about what happened; correct?

4 A. Correct.

5 Q. And when the detective asked you the
6 question, what was the first indicator to you that
7 something wasn't right, you said one of the guys
8 just wasn't breathing. He just had blue lips.
9 Correct?

10 A. Correct.

11 Q. And you understood the detective's
12 question; correct?

13 A. Yes.

14 Q. It was not vague or ambiguous; correct?

15 A. Correct.

16 Q. And it was just a couple hours after the
17 accident; correct?

18 A. Yes.

19 Q. And you know that when you talk to police
20 officers, you're supposed to tell the truth;
21 correct?

22 A. Yes.

23 Q. And you were telling the truth; right?

24 A. Yes.

25 Q. And the first thing that you mentioned

- 1 was one of the guys just wasn't breathing; correct?
- 2 **A. Yes.**
- 3 **Q.** You didn't tell them about Lou Caci;
- 4 correct?
- 5 **A. About who?**
- 6 **Q.** You didn't tell them about the fellow who
- 7 fell into rock pit; correct?
- 8 **A. Correct.**
- 9 **Q.** You didn't tell them about the person
- 10 screaming, I'm going to have a heart attack;
- 11 correct?
- 12 **A. Correct.**
- 13 **Q.** You didn't tell him about the statements
- 14 that my client purportedly made while in the sweat
- 15 lodge; correct?
- 16 **A. Correct.**
- 17 **Q.** I read that correctly; right?
- 18 **A. Yes.**
- 19 **Q.** After this interview, you went back to
- 20 your house, you spent the night, and you know your
- 21 mom went to the hospital; right?
- 22 **A. Yes.**
- 23 **Q.** And your mom was really upset; correct?
- 24 **A. Yes.**
- 25 **Q.** And your mom was upset and she wasn't

- 1 feeling well; correct?
- 2 **A. Correct.**
- 3 **Q.** Your mom, I would assume, was telling you
- 4 why she was upset; correct?
- 5 **A. We were all upset. She was just saying**
- 6 **how she couldn't believe this was happening.**
- 7 **Q.** And Fawn was there?
- 8 **A. Correct.**
- 9 **Q.** And when your mom and dad went to the
- 10 hospital, you spent the night with Fawn; correct?
- 11 **A. Yes. She stayed at our house.**
- 12 **Q.** And you told this jury on direct that you
- 13 were very upset about what happened; correct?
- 14 **A. Yes. I was crying all night.**
- 15 **Q.** And you were crying all night. You were
- 16 telling Fawn why you were upset; correct?
- 17 **A. I was asking if the people were going to**
- 18 **be okay that went to the hospital mainly. And I**
- 19 **was talking about the people that were going to the**
- 20 **hospital, not about what had actually happened.**
- 21 **Q.** Did you tell Fawn that you had been
- 22 interviewed by a Yavapai County Sheriff's Office
- 23 detective?
- 24 **A. I don't recall.**
- 25 **Q.** Was that the first time you'd ever been

- 1 interviewed by a detective?
- 2 **A. Yes.**
- 3 **Q.** Did you tell your mother that you had
- 4 been interviewed by a detective?
- 5 **A. I don't recall.**
- 6 **Q.** Did you tell your dad that you had been
- 7 interviewed by a detective?
- 8 **A. I don't recall.**
- 9 **Q.** Do you recall, Sara, that it was the next
- 10 day on October 9th, that you were reinterviewed by
- 11 the Yavapai County Sheriff's Office?
- 12 **A. Yes.**
- 13 **Q.** And during that interview your dad went
- 14 with you; correct?
- 15 **A. Correct.**
- 16 **Q.** And it was during that interview that for
- 17 the first time you told the detectives that Mr. Ray
- 18 said something like, that's a good thing. That
- 19 means -- I don't know. He said something. He said
- 20 just leave them in. We got one more round. He'll
- 21 be fine.
- 22 **A. Yes.**
- 23 **Q.** Do you remember making that statement?
- 24 **A. Yes.**
- 25 **Q.** And that was the next day; correct?

- 1 **A. Yes.**
- 2 **Q.** After you had spent the night with Fawn?
- 3 **A. Yes.**
- 4 **Q.** After you'd had a chance to speak with
- 5 your mom?
- 6 **A. No. Actually we didn't really talk much.**
- 7 **I was over getting my interview. And then I came**
- 8 **back after that. And then the EMTs came up and**
- 9 **asked if she was okay and told us that a couple**
- 10 **people had died or someone had died and that they**
- 11 **thought that she should go to the hospital. And**
- 12 **then by the time she got back, I was asleep.**
- 13 **Q.** Okay. I just want to make it very clear
- 14 to this jury that your testimony is that, as a
- 15 17-year-old girl, for the first time in your life
- 16 you've witnessed someone die. You've been
- 17 interviewed by police detectives. Your mom is
- 18 going to the hospital. And you're upset and crying
- 19 all night. And you're not talking to your mom and
- 20 dad about what happened. Is that your testimony?
- 21 **A. Yes.**
- 22 **MR. KELLY:** Your Honor, I'd ask that we'd be
- 23 able to take a break.
- 24 **THE COURT:** We can take the afternoon recess.
- 25 **At this point, ladies and gentlemen,**

1 please remember the admonition. Please be
 2 reassembled at 3:15, about 20 minutes.
 3 And, Ms. Mercer, remember the rule of
 4 exclusion I talked to you about. Okay?
 5 THE WITNESS: Okay.
 6 THE COURT: We'll be in recess.
 7 Thank you.
 8 (Recess.)
 9 THE COURT: The record will show the presence
 10 of Mr. Ray, the attorneys, the jury and Ms. Mercer.
 11 Mr. Kelly.
 12 MR. KELLY: Thank you, Judge.
 13 Q. Sara, right before the break I think we
 14 were talking about what happened after the sweat
 15 lodge accident of October 8th, 2009. You said that
 16 you helped your mom drag the people out of the back
 17 of the sweat lodge afterward.
 18 A. Yes.
 19 Q. And then your dad came over and started
 20 doing CPR; right?
 21 A. Yes.
 22 Q. Do you recall other participants, maybe
 23 somebody who identified herself as a doctor, also
 24 helping out?
 25 A. Yes. She came over after my dad had

1 begun CPR.
 2 Q. You probably don't know her name, but if
 3 that was Dr. Armstrong, does that ring a bell?
 4 A. No.
 5 Q. And this doctor then began kind of
 6 directing the emergency help on the victims; right?
 7 A. I don't really know. After my dad came
 8 over and then a few other people came over and were
 9 kind of gathered around them, and then I walked off
 10 and started helping the people around the tarps
 11 again. So I don't really know what went on.
 12 Q. So you wouldn't have any reason to
 13 dispute that if Dr. Armstrong asked Mr. Ray to
 14 locate an emergency medicine device, you weren't
 15 there?
 16 A. No.
 17 Q. Now, you said you saw Mr. Ray come out of
 18 the sweat lodge at the end of the ceremony. He
 19 stood up and stretched and then went and sat down
 20 in a chair?
 21 A. Yes.
 22 Q. That's the last you saw of him?
 23 A. Yes.
 24 Q. Is that the last you saw of him that
 25 entire evening?

1 A. Yes. I never saw him again after that.
 2 Q. Were you present when all the emergency
 3 personnel showed up at the scene?
 4 A. At the beginning, yes. But after the
 5 first ambulance showed up -- I think there was only
 6 one there. But after the EMT and the ambulance
 7 showed up, I left after that.
 8 Q. And I want to put up on the screen
 9 Exhibit 229.
 10 May I approach?
 11 THE COURT: Yes.
 12 Q. BY MR. KELLY: Sometimes, Sara, it's
 13 easier if you look at the actual photograph.
 14 You recognize this as where the sweat
 15 lodge is at Angel Valley; right?
 16 A. Yes.
 17 Q. And if we blow up the folks to the right,
 18 do you see your mother?
 19 A. Yes.
 20 Q. Can you see that laser pointer? Is that
 21 your mom?
 22 A. It looks like her.
 23 Q. And I'm going to ask you, do you see
 24 yourself --
 25 A. Yes.

1 Q. -- in this photograph?
 2 A. I think I'm the one she's hugging.
 3 Q. You think this is you that she's hugging?
 4 A. Yeah.
 5 Q. If we go back out, do you see Mr. Ray
 6 here as well?
 7 A. I don't know if that's him or not.
 8 Q. Okay. Do you see Amayra Hamilton?
 9 A. Yes.
 10 Q. Do you remember how Mr. Ray was dressed
 11 on October 8th?
 12 A. No.
 13 Q. If we go ahead and back out on full view,
 14 you agree with me there are several ambulances
 15 there? It looks like a police car here; right?
 16 A. Yes.
 17 Q. Now, I take it, Sara, from your
 18 testimony, you don't know what time this photograph
 19 was taken. Right?
 20 A. No.
 21 Q. Do you believe that after this photograph
 22 is when you went back to your house --
 23 A. Yes.
 24 Q. -- for a while?
 25 And then once you spent some time up at

1 your house in Angel Valley, then you came back down
2 and completed the interview with
3 Detective Parkison; correct?

4 **A. It was not at the scene that the**
5 **interview was taken. It was at the dining hall**
6 **that the interview was taken.**

7 **Q.** Exactly. So it was -- I guess my
8 question is, whatever time this photograph was
9 taken, you probably left the scene, went to your
10 room and then came back down and you were
11 interviewed in the hall, in the dining hall; right?

12 **A. Yes.**

13 **Q.** If the accident or the sweat lodge
14 ended -- let me back up.

15 If the 9-1-1 call took place at about
16 5:20 or 5:19 in the afternoon, would that sound
17 about right?

18 **A. I really don't know.**

19 **Q.** You told us you went up to your room, and
20 it was getting dark; right?

21 **A. Yes.**

22 **Q.** And the sweat lodge ended before it got
23 dark?

24 **A. Yes.**

25 **Q.** This photograph that we've been looking

1 at is before it got dark; right?

2 **A. Yes.**

3 **Q.** So if the evidence in this case is that
4 the 9-1-1 call was placed sometime between 5:15 and
5 5:30 in the afternoon, would that sound about
6 right?

7 **A. Sure.**

8 **Q.** And if the interview that you completed
9 with the detective took place at approximately
10 8:00 p.m., if those facts are true, then that would
11 be about two and a half hours after this; right?

12 **A. Yes.**

13 **Q.** Now, you told us that in response a
14 question from Ms. Polk that you were in shock
15 during the interview?

16 **A. Yes.**

17 **Q.** That was your voice we heard; right?

18 **A. Yes.**

19 **Q.** I heard Shawna laughing at the beginning
20 of the interview. Did you?

21 **A. I don't recall.**

22 **Q.** Shawna was with you at the end of the
23 sweat lodge; correct?

24 **A. Yes.**

25 **Q.** She was with you during the interview

1 with Detective Parkison; right?

2 **A. Yes.**

3 **Q.** Now, during that interview do you recall
4 telling the detective that this is a yearly event
5 that happens, so it's a pretty normal thing, but
6 this year it got out of hand?

7 **A. Yes.**

8 **Q.** If you want to take a look at the exhibit
9 in front of you, on page 6, lines 11 through 15, to
10 refresh your recollection.

11 Do you recall telling him that this year
12 it just got out of hand, I guess? I don't know
13 what happened this year?

14 **A. Yes.**

15 **MS. POLK:** Your Honor, pursuant to 106, the
16 state would request that Mr. Kelly read the
17 beginning of line 11.

18 **MR. KELLY:** Judge, that's the purpose of
19 redirect.

20 **THE COURT:** Okay. And can be with context.
21 But in this instance I will --

22 **MR. KELLY:** Your Honor, I'll withdraw my
23 objection.

24 **Q.** I'm going to ask you a question and start
25 on page 6, line 11. Do you recall the detective

1 asking you, anybody have any concerns about that
2 many people being in the sweat lodge? And just
3 read to the jury off of the transcript your entire
4 response to that question.

5 **A. No. They've done it before. Like, this**
6 **is a yearly event that happens. So pretty normal**
7 **things. But just this year got out of hand, I**
8 **guess. I don't know what happened this year.**

9 **Q.** And, again, you understood the
10 detective's question?

11 **A. I guess.**

12 **Q.** It was pretty clear?

13 **A. I don't remember. I don't remember the**
14 **thoughts that were going through my head at that**
15 **moment. But --**

16 **Q.** Well, let's see if you can answer. My
17 question is more simple than that. You can
18 understand that question from the detective; right?

19 **A. Yes.**

20 **Q.** And you read that response correctly to
21 this jury; correct?

22 **A. Yes.**

23 **Q.** And that question was not vague; correct?

24 **A. Correct.**

25 **Q.** And your response was that this is a

1 yearly event that happens, so pretty normal thing.
 2 But this year it got out of hand, I guess.
 3 Correct?
 4 **A. Correct.**
 5 **Q.** I don't know what happened this year.
 6 Correct?
 7 **A. Correct.**
 8 **Q.** And, again, this is an interview that
 9 takes place two-and-a-half, three hours after the
 10 accident; correct?
 11 **A. Correct.**
 12 **Q.** Now, you told us that you were living on
 13 Angel Valley in 2008; right?
 14 **A. Yes.**
 15 **Q.** And you answered some questions from
 16 Ms. Polk about what you observed; correct?
 17 **A. Correct.**
 18 **Q.** And you told us that you saw some people
 19 who were throwing up; correct?
 20 **A. Correct.**
 21 **Q.** And were apparently upset; correct?
 22 **A. Correct.**
 23 **Q.** And appeared to be maybe laying on the
 24 ground in the mud; correct?
 25 **A. Yes.**

1 **Q.** And you also observed some people that
 2 were doing quite well; right?
 3 **A. Yes.**
 4 **Q.** In fact, many of them appeared to be
 5 pretty happy about what happened; correct?
 6 **A. Some of them.**
 7 **Q.** Let's take a look at Exhibit 853. Do you
 8 remember seeing this guy?
 9 **A. Yes.**
 10 **Q.** And let's take a look at 857. And this
 11 lady?
 12 **A. I don't remember her. No.**
 13 **Q.** Well, do you recognize that scene with
 14 the water on the ground as the sweat lodge ceremony
 15 in 2008 at Angel Valley?
 16 **A. Yes.**
 17 **Q.** You can see that that lady is pretty
 18 happy; right?
 19 **A. Yes. But this one right here is not.**
 20 **Q.** Right. But the one lady whose arms are
 21 up is pretty happy; right?
 22 **A. Yes.**
 23 **Q.** And then like you pointed out, that lady
 24 doesn't look that --
 25 **A. Or them over there.**

1 **Q.** -- She's happy. Does she?
 2 Pardon me?
 3 **A. Or them over there. They don't look**
 4 **happy.**
 5 **Q.** Or these over there; correct?
 6 So my question was, you told us about the
 7 ones who were not feeling well. But during
 8 that 2008 event, some people were feeling very
 9 well; right?
 10 **A. Some people were. Yes. But my concern**
 11 **wasn't drawn towards the people that were feeling**
 12 **well.**
 13 **Q.** So, as an example, these people appear to
 14 be doing well, and this lady appears to be doing
 15 well; right?
 16 **A. Yes.**
 17 **Q.** And this lady appears to be having some
 18 difficulty as well as this lady; right?
 19 **A. Yes.**
 20 **Q.** And if we can take a look at 858, the
 21 same thing; right? We've got some folks who appear
 22 to be having a pretty good experience. If we look
 23 in the background, somebody who's, like I said,
 24 down on the ground in the mud; right?
 25 **A. Yes.**

1 **Q.** And if we look at Exhibit 871, same
 2 thing. These people appear to be very happy. And
 3 yet, there are people in the background who are
 4 laying down; right?
 5 **A. Yes.**
 6 **Q.** And, finally, in 2008, if we could look
 7 at 862, you see your mother in that photograph;
 8 correct?
 9 **A. Yes.**
 10 **Q.** And your mom is smiling; right?
 11 **MS. POLK:** Your Honor, objection. That
 12 misstates the previous testimony.
 13 **MR. KELLY:** I think the photograph speaks for
 14 itself.
 15 **THE COURT:** If you can answer that, you may.
 16 Overruled.
 17 **THE WITNESS:** I can't really say if she's
 18 smiling or not. She could be scratching her arm
 19 and saying something. Doesn't look like her normal
 20 smile. No.
 21 **Q.** BY MR. KELLY: All right. That's your
 22 mother; right?
 23 **A. Yes.**
 24 **Q.** She was present during 2008; right?
 25 **A. Yes.**

1 Q. And let's go back to 911, the red guy.

2 He's definitely smiling; right?

3 A. Yes.

4 Q. Your dad was a certified emergency first
5 responder in 2008; correct?

6 MS. POLK: Objection. That mischaracterizes
7 Mr. Mercer's qualifications.

8 THE COURT: Ms. Mercer, if the question makes
9 sense to you, you can answer it if you can. If you
10 can't answer it, you can just tell the attorney you
11 can't answer.

12 THE WITNESS: Okay.

13 THE COURT: If you can, you may go ahead and
14 answer.

15 THE WITNESS: Can you repeat the question?

16 Q. BY MR. KELLY: Sure. In 2008 you knew
17 your dad had specialized medical training to help
18 people during an incident; correct?

19 A. Yes. But there were other people there
20 to perform that task besides him.

21 Q. Any difficulty understanding my question?

22 A. No.

23 Q. In 2008, just like in 2009, your dad was
24 certified in some respect as an emergency first
25 responder; correct?

1 A. Yes.

2 Q. And in 2008 your dad didn't call 9-1-1;
3 correct?

4 A. Correct.

5 MR. KELLY: And if we can put back up 862.

6 Q. Your mom didn't call 9-1-1; correct?

7 A. In 2009?

8 Q. In 2008.

9 A. I don't remember the ambulance being
10 called in 2008.

11 Q. And you didn't call the ambulance
12 in 2008; right?

13 A. No.

14 Q. And despite what you saw in 2008, you
15 came back in 2009; right?

16 A. Yes.

17 Q. And as you told us, you even called
18 Shawna Bowen and said, come down and volunteer
19 during the James Ray International sweat lodge
20 events in 2009; correct?

21 A. Yes.

22 Q. And you had more of a role in 2009 than
23 you had in 2008; correct?

24 A. Yes.

25 Q. You wouldn't have done that, Sara, if you

1 thought there was a problem; correct?

2 A. I went there to help. I didn't really
3 think about the year before. I just -- I was there
4 when the sweat lodge was going on, and I had
5 nothing else to do, so it was, like, let's go help.

6 Q. Did you understand my question? If you
7 thought that someone was going to die after being
8 there in 2008, you wouldn't have went; correct?

9 A. No.

10 Q. I mean, isn't that correct?

11 A. Correct.

12 Q. In fact, when you were interviewed on
13 October 8th, you were telling the truth to the
14 detective when you said, this is a yearly event
15 that happens so it's pretty normal thing, but this
16 year it got out of hand. I don't know what
17 happened.

18 You were telling the truth; right?

19 A. Yes.

20 Q. Now, you know, Sara, that your mom and
21 dad had to hire an attorney after the October 8th,
22 2009 accident; correct?

23 MS. POLK: Objection. Misstates the
24 testimony.

25 THE COURT: Sustained.

1 Q. BY MR. KELLY: Sara, you know that an
2 attorney represents your mom and dad free of charge
3 after the October 8th, 2009, accident; correct?

4 A. Yes.

5 Q. Her name is Monica Lindstrom, a pregnant
6 lady?

7 A. Yes.

8 Q. I think she was here the day you came to
9 take the tour of the courtroom. Correct?

10 A. Yes.

11 Q. You know that Angel Valley and Amayra and
12 Michael Hamilton have been sued as a result of the
13 accident that happened on October 8th, 2009;
14 correct?

15 A. No. I did not know that.

16 Q. You don't have any reason to disagree
17 with that, do you?

18 A. I don't know.

19 Q. Listen to my question. If I were to tell
20 you that there has been evidence in this case that
21 Amayra Hamilton, Michael Hamilton and Angel Valley
22 have been sued because of the construction of the
23 sweat lodge, you don't have a reason to dispute
24 that, do you?

25 MS. POLK: Objection, Your Honor. Misstates

1 the testimony, misstates the nature of the lawsuit.

2 MR. KELLY: It doesn't, Judge.

3 THE COURT: Again, ladies and gentlemen, a
4 lawyer's question is not evidence. I instructed
5 you in that fashion.

6 If you're able to answer that,

7 Ms. Mercer, you may.

8 Overruled.

9 THE WITNESS: I can't answer that.

10 Q. BY MR. KELLY: Did you understand my
11 question?

12 A. **I can't answer that. I don't know.**

13 Q. Okay. If I were to tell you that Amayra
14 Hamilton has been sued by participants from the
15 October 8th, 2009 incident, do you have any reason,
16 Sara, to disagree with that?

17 A. **No.**

18 Q. If I were to tell you that make Michael
19 Hamilton has been sued by participants as a result
20 of the October 8th, 2009 accident, do you have any
21 reason to dispute that?

22 A. **No.**

23 Q. If I were to tell you that Angel Valley
24 has been sued as a result of the October 8th, 2009,
25 incident, would you have any reason to dispute

1 that?

2 A. **No.**

3 Q. Now, you understood that in 2008 -- you
4 know it's a sweat lodge; right? I understand
5 you've never been in a sweat lodge. But you know a
6 sweat lodge is hot; right?

7 A. **Yeah.**

8 Q. And you told us that when the door was
9 open, you could feel the heat; right?

10 A. **Yes.**

11 Q. I mean, a sweat lodge isn't going to work
12 unless it's hot; correct?

13 A. **Correct.**

14 Q. Let's take a look at 872.

15 Do you remember that lady that you
16 pointed out as being in distress? Do you see her
17 in 872?

18 A. **Yeah.**

19 Q. She's looking pretty good now; right?

20 A. **Yes.**

21 Q. 873. Now she's smiling; correct?

22 A. **Correct.**

23 Q. In 2008 you told us about three
24 individuals. But you would agree with me, Sara,
25 that everyone entered that sweat lodge by their own

1 free will; correct?

2 A. **Yes.**

3 Q. In 2008, just like 2009, if a person
4 wanted to leave, they could do so; correct?

5 A. **Yes.**

6 Q. In 2008 and 2009, when people thought it
7 got too hot in the sweat lodge, they left; correct?

8 A. **Correct.**

9 Q. Some people left and actually went back
10 in; correct?

11 A. **Yes.**

12 Q. You're not a medical doctor; correct?

13 A. **Correct.**

14 Q. You're not a toxicologist; correct?

15 A. **Correct.**

16 Q. Not a chemist; correct?

17 A. **Correct.**

18 Q. You're a teenage girl who is just making
19 observations based on your life experience;
20 correct?

21 A. **Yes.**

22 Q. Thank you, Sara.

23 Thank you, Judge.

24 THE COURT: Thank you, Mr. Kelly.

25 Redirect, Ms. Polk?

1 MS. POLK: Yes, Your Honor. Just briefly.

2 REDIRECT EXAMINATION

3 BY MS. POLK:

4 Q. Sara, I just have a few questions for
5 you. You talked about living on the property in
6 the trailer with your dad and your mom coming back
7 and forth?

8 A. **Yes.**

9 Q. And that was 2007?

10 A. **Yes.**

11 Q. I'm going to put up on the overhead
12 Exhibit 140.

13 Do you recognize what that is a map of?

14 A. **Yes.**

15 Q. And are you able to see on here the place
16 where the trailer was located when you were living
17 in it?

18 A. **It -- the trailer was over here. It was
19 around that area.**

20 Q. It was --

21 A. **It was closer to the water, though.**

22 Q. Closer to Oak Creek?

23 A. **Yeah. It would have been right close to
24 the water.**

25 Q. And then later when you and your parents

1 moved to the house on the property, whereabouts was
2 that house?

3 **A. Over here.**

4 **Q.** Sara, you talked about going to --

5 **A. Wait, wait. Sorry. I've got to look at**
6 **the picture. It was right next to the orange house**
7 **and up. So it was over here. Sorry.**

8 **Q.** You see the orange house right here?

9 **A. Yeah.**

10 **Q.** The house that was on private property
11 was more in this area?

12 **A. Yes.**

13 **Q.** You said that you were going to high
14 school. And I think you said you were a sophomore?

15 **A. Yeah.**

16 **Q.** Back in what year? 2009?

17 **A. Yeah.**

18 **Q.** And what was the name of the high school
19 you were going to?

20 **A. The Mingus High School.**

21 **Q.** And that was in what town?

22 **A. Cottonwood.**

23 **Q.** You were asked some questions about 2009
24 and when your dad helped put up the sweat lodge?

25 **A. Yeah.**

1 **Q.** Do you remember who else was present when
2 your parents were helping put up the sweat lodge?

3 **A. No, I don't.**

4 **Q.** You talked a little bit about looking --
5 peeking inside a storage facility where the tarps
6 and the blankets were stored. I'm going to put up
7 on the overhead, Exhibit 795.

8 Do you recognize what that's a picture
9 of?

10 **A. Yes.**

11 **Q.** What do you recognize it to be?

12 **A. That's where some of the tarps were that**
13 **were used for the sweat lodge.**

14 **Q.** And then, Sara, you were asked some
15 questions about during the sweat lodge ceremony
16 of 2009 and where you were. I just want to go
17 through it round by round to clear up where you
18 were, where you would have been.

19 **A. Okay.**

20 **Q.** Do you remember before each round began
21 where you were?

22 **A. Not exactly. I mean, if there were -- if**
23 **the door was opened and there was still people in**
24 **distress, I was still over there helping those**
25 **people. But if those people seemed to be okay and**

1 **there were other people over there helping, I'd**
2 **either be by the door with my mom or cleaning the**
3 **rocks off.**

4 **Q.** Okay. Each time the door was open in
5 between each round, did you go over to the door
6 area?

7 **A. While it was open?**

8 **Q.** Yes.

9 **A. Yes.**

10 **Q.** And for what purpose?

11 **A. Just to help people out.**

12 **Q.** Each time that the door was open in
13 between rounds, did you see Mr. Ray?

14 **A. Yes.**

15 **Q.** And each time that the door was open in
16 between the rounds, did you say something or have a
17 conversation with Mr. Ray?

18 **A. I wouldn't say every time, but a few**
19 **times. Yes.**

20 **Q.** And then you talked about putting your
21 hands on both Mr. Ray and then the person who was
22 at the other side of the door. Did you do that in
23 between each round at some point?

24 **A. Not every round. But yes.**

25 **Q.** Do you recall about how many rounds you

1 did that?

2 **A. Four -- four or five.**

3 **Q.** Once the door, then, was closed and a
4 round had started, where did you go?

5 **A. I -- I really can't say where I went**
6 **after each time. But sometimes I would go and fill**
7 **up the buckets with water or I would go help the**
8 **people in distress.**

9 **Q.** If you weren't filling up the buckets
10 with water and you weren't helping people who were
11 in distress, where did you go?

12 **A. I was standing by the sweat lodge talking**
13 **with my mom.**

14 **Q.** You were asked some questions about what
15 your dad was doing throughout the ceremony in 2009?

16 **A. Yeah.**

17 **Q.** First of all, do you know what your dad's
18 job was for the 2009 ceremony?

19 **A. He was the fire tender.**

20 **Q.** And what does that mean?

21 **A. He was the one that would make sure the**
22 **fire kept burning, and he was the one who would**
23 **take the rocks from the fire and take them into the**
24 **pit.**

25 **Q.** Was anybody else tending the fire with

1 your dad?

2 **A. Rotillo was.**

3 **Q.** Do you know if your dad was able to heat
4 up all the rocks that were used in Mr. Ray's sweat
5 lodge ceremony at one time?

6 **A. Did he use all the rocks?**

7 **Q.** No. Was he able -- let me rephrase the
8 question.

9 You were asked by Mr. Kelly a question
10 about whether your dad was helping people in
11 distress?

12 **A. Yeah.**

13 **Q.** Do you know whether being the fire tender
14 required your dad's full attention?

15 **A. Yeah. He was there around the fire the**
16 **whole time, Like, making sure it stayed lit. And**
17 **then, yeah, he was just mainly there making sure**
18 **that it was -- stayed lit. He would be throwing**
19 **logs on just to make sure it was a nice, hot fire.**

20 **Q.** And you were asked by a question by
21 Mr. Kelly about why -- what your dad was doing at
22 the end. You saw your dad doing CPR?

23 **A. Yes.**

24 **Q.** And did you see where Mr. Ray was when
25 your dad was doing CPR?

1 **A. No.**

2 **Q.** You were asked some questions by
3 Mr. Kelly whether you would agree that people were
4 free to leave. And you responded, well, they could
5 if they were able to. What did you mean?

6 **A. If they were physically able to. Like,**
7 **some people were trying to leave, but they couldn't**
8 **and had to be drug out and -- for instance, and the**
9 **people who were unconscious, obviously they would**
10 **have left if they had the ability to.**

11 **Q.** A couple of different times now you've
12 talked about -- you used the word "distress." You
13 talked about people being in distress?

14 **A. Uh-huh.**

15 **Q.** What does that mean?

16 **A. Just people obviously not acting right,**
17 **not feeling right. Either, like, when they come**
18 **out, their eyes are rolling back in their heads and**
19 **just not normal behavior for a human being that's**
20 **feeling well.**

21 **Q.** You were asked some questions about when
22 people were leaving and the things that you heard
23 James Ray say to them including, you're more than
24 your body. Do you recall how many times you heard
25 Mr. Ray say that?

1 **A. I can't recall the exact number, but he**
2 **did say it multiple times.**

3 **Q.** Just a couple of questions about 2008,
4 Sara, and what you saw. You had testified on
5 direct examination that some of people appeared to
6 be happy and others did not. And then you were
7 shown some pictures by Mr. Kelly on
8 cross-examination.

9 First of all, do you know how many
10 participants there were in 2008 in Mr. Ray's sweat
11 lodge ceremony?

12 **A. No, I do not. But I do know there were a**
13 **whole lot less than there was in 2009. I know**
14 **there was an excessive amount in 2009.**

15 **Q.** And in 2009 -- or '08, with respect to
16 the photographs that Mr. Kelly showed you, did that
17 show all the participants that you saw and
18 testified about?

19 **A. No.**

20 **Q.** I'm going to put up on the overhead
21 Exhibit 873. That's a photograph that Mr. Kelly
22 showed you. With respect to the color of this
23 lady's face, did you see that sort of red color on
24 more than one person in 2008?

25 **A. Yes.**

1 **Q.** And do you recall about how many people
2 looked like that?

3 **A. Most everybody was rather red when they**
4 **came out.**

5 **Q.** And in 2009 did you see people who were
6 red?

7 **A. Yes.**

8 **Q.** And about how many people?

9 **A. All of them.**

10 **Q.** When Mr. Kelly was asking you about what
11 you saw in 2008, you said something about some
12 people concerned you. What concerned you about
13 what you saw in 2008?

14 **A. Just the fact that the way the people**
15 **were acting, like just coming out with, like I said**
16 **before, their eyes rolling back in their head, and**
17 **they just didn't look right. Their pupils were**
18 **really big, and they wouldn't focus on anything.**
19 **They were all over the place. They couldn't make**
20 **complete sentences. They weren't acting right.**

21 **Q.** And then you had testified about somebody
22 who was -- I can't remember what the words you used
23 were, but you said, all tensed up and shaky?

24 **A. Yes.**

25 **Q.** Do you remember what -- and that

1 was 2008?

2 **A. Yes.**

3 **Q.** Do you remember what happened to that
4 lady?

5 **A. No, I do not.**

6 **Q.** Sara, you testified about somebody
7 screaming -- I believe you testified about somebody
8 screaming about not wanting to die in 2008?

9 **A. Yes.**

10 **Q.** Did you hear something similar to that
11 in 2009?

12 **A. Yes.**

13 **Q.** And what was similar in 2009?

14 **A. They were both yelling, I don't want to**
15 **die. And -- they were both yelling, I don't want**
16 **to die.**

17 **Q.** Mr. Kelly just asked you some questions
18 about whether or not your parents had an attorney.
19 When you were first interviewed by the detective on
20 the evening of October 8, did you have an attorney?

21 **A. No.**

22 **Q.** And when you were interviewed this second
23 timed on October 9th, the next day, did you have an
24 attorney?

25 **A. No.**

1 **Q.** And have you had an attorney here in the
2 courtroom today for your testimony?

3 **A. No.**

4 **Q.** I'm going to ask you a couple questions
5 about those two interviews. First of all, Sara, on
6 the evening of October 8th, where were you when --
7 before you went to the dining room?

8 **A. At my house.**

9 **Q.** And when was it that you had learned that
10 two people had actually passed away?

11 **A. When the EMTs actually came and spoke**
12 **with my mom to make sure she was feeling okay.**

13 **Q.** Was that before or after your first
14 interview?

15 **A. After.**

16 **Q.** For that first interview, what was it --
17 you were at your house. What was it that made you
18 go to the dining room then?

19 **A. I forget who, but someone came and told**
20 **me and Shawna that they were doing interviews,**
21 **police interviews, and that everybody was gathering**
22 **over there. And we ran into one of the police**
23 **officers, and we just walked over with her the rest**
24 **of the way and did our interview after that.**

25 **Q.** You went up to the dining room then?

1 **A. Yes.**

2 **Q.** Do you have any recollection today how
3 many people were up in the dining room?

4 **A. No. A majority of people were in the**
5 **dining room.**

6 **Q.** And Mr. Kelly had asked you some
7 questions about what time you were interviewed.
8 Once you got up to the dining room, what happened?

9 **A. I started my interview. And then after**
10 **the interview, I just went back to the house.**

11 **Q.** How did somebody find you to do an
12 interview once you arrived at the dining room?

13 **A. I -- I walked up with the police officer.**
14 **And we were talking as we were walking up. And she**
15 **said, I'll just start you guys off with the**
16 **interview. I started my interview with her.**

17 **Q.** You recall how many minutes that
18 interview was?

19 **A. No.**

20 **Q.** Would you agree that was very short?

21 **A. Yes.**

22 **Q.** You told Mr. Kelly that you were in shock
23 at that time?

24 **A. Yes.**

25 **Q.** Tell the jury what you were feeling when

1 you were first interviewed.

2 **A. I was extremely scared, and I didn't know**
3 **what was going on really. And I had never**
4 **experienced anything like this before. I didn't**
5 **know what -- I just didn't know what to expect or**
6 **what was going to happen.**

7 **Q.** Did you feel scared when you were being
8 interviewed by the police officer?

9 **A. No.**

10 **Q.** And when the police officer was
11 interviewing you, who was asking the questions?

12 **A. I don't recall who exactly was asking the**
13 **questions.**

14 **Q.** Were you offering information or were you
15 responding to questions asked of you?

16 **A. I was responding to questions. But it**
17 **wasn't just me responding. It was, like, me and**
18 **Shawna. And we were having a little discussion**
19 **about it. I wouldn't -- I didn't really think it**
20 **was like my official statement or anything.**

21 **Q.** What did you think?

22 **A. I just thought they were looking for a**
23 **little bit of information about what happened.**

24 **Q.** And during that first quick interview,
25 did the detective ever ask you if you had heard

1 anything said during Mr. Ray's sweat lodge
2 ceremony?

3 **A. I can't recall exactly. No.**

4 **Q.** If the detective had asked you that,
5 would you have told them what you heard?

6 **A. Yes.**

7 **Q.** That second interview that occurred, how
8 did that come about?

9 **A. I don't remember exactly. I just**
10 **remember my parents saying that I had to go speak**
11 **with an officer before or I had to go speak with an**
12 **officer that next morning. And we drove over there**
13 **and talked to him.**

14 **Q.** And it was in the morning on the next
15 day, that Friday?

16 **A. Yes.**

17 **Q.** Did you have your mom or dad with you for
18 that second interview?

19 **A. My dad was with me.**

20 **Q.** And at that time, did you -- what was
21 your impression of what that interview was about?

22 **A. I -- I wasn't sure. I just thought I was**
23 **kind of telling them a little bit about what I**
24 **knew. I mean, no one really explained about what**
25 **was going to happen. I just had questions asked of**

1 **me. I was answering the questions that he asked.**

2 **Q.** For that second interview, did you now
3 know that two people had passed away?

4 **A. Yes.**

5 **Q.** And did you know whether they were the
6 people you had helped pull out of the sweat lodge?

7 **A. I didn't know.**

8 **Q.** And how were you feeling for the second
9 interview?

10 **A. I was still just kind of mind boggled**
11 **about everything that had happened.**

12 **Q.** And in that second interview the next
13 morning, did you tell the detective what you told
14 the jury, about hearing the conversation about
15 people being unconscious and how Mr. Ray responded?

16 **A. I -- I don't recall.**

17 **Q.** Let me show you a transcript of that
18 interview. Did you know that that second interview
19 was recorded, as was the first?

20 **A. Yes.**

21 **Q.** I'm going to show you what's been marked
22 as Exhibit 679.

23 I'll just point you to the first page and
24 let you read through that and see if that refreshes
25 your recollection.

1 You want to look at the next page as
2 well? I'll just point you down here.

3 Having had a chance to look at a
4 transcript of that interview that occurred the next
5 morning, Sara, does that refresh your recollection
6 as to what you told the detectives -- as to whether
7 you told the detectives about the conversation that
8 you testified to this jury about, about people
9 being unconscious inside the sweat lodge?

10 **A. Yes.**

11 **Q.** And can you tell the jury whether you
12 told that to the detective the next morning?

13 **A. Yes.**

14 **Q.** And, Sara, do you have in front of you
15 the transcript of your first interview?

16 **A. I think so.**

17 **Q.** And that's Exhibit 693?

18 **A. I don't know.**

19 **Q.** Would you look at Page 3.

20 **A. It is.**

21 **Q.** And do you see line 8?

22 **A. Yes.**

23 **Q.** Do you recall the question from Mr. Kelly
24 about this first interview and Detective Parkison
25 saying to you, what was the first indicator to you

1 that something wasn't right?

2 **A. Yes.**

3 **Q.** Do you recall the question from Mr. Kelly
4 referring to this interview?

5 **A. Yes.**

6 **Q.** Do you recall what you told the detective
7 in response to that question?

8 **A. Yes.**

9 **Q.** And what was that?

10 **A. That the guys lips were blue, and they**
11 **weren't breathing.**

12 **Q.** And Sara, what I want to ask you, first
13 of all, had you ever been to a sweat lodge ceremony
14 not performed by Mr. Ray?

15 **A. No.**

16 **Q.** And how many sweat lodge ceremonies
17 performed by Mr. Ray had you been to?

18 **A. Two.**

19 **Q.** The first was in 2008?

20 **A. Yes.**

21 **Q.** And the second was in 2009?

22 **A. Yes.**

23 **Q.** Did you know what to expect in 2008?

24 **A. No.**

25 **Q.** And for 2009, having been through 2008,

1 did you have some idea of what to expect?

2 **A. I -- I wasn't really sure what was going**
3 **to happen.**

4 **Q.** Do you know what happens at sweat lodge
5 ceremonies not performed by Mr. Ray?

6 MR. KELLY: Your Honor, objection. Lack of
7 foundation.

8 THE COURT: Sustained.

9 **Q.** BY MS. POLK: The question from
10 Detective Parkison to you about what was the first
11 indicator to you that something wasn't right,
12 Sara -- what do you have that to compare to? How
13 do you know if something is right or not if you've
14 only been to two ceremonies, both performed by
15 Mr. Ray?

16 **A. I don't know. I wasn't really sure if**
17 **everything that was going on was supposed to happen**
18 **or what. But -- I knew that the people in the**
19 **condition that they were in wasn't normal, if that**
20 **makes sense.**

21 **Q.** Sara, you testified that shortly after
22 October 8th of 2009 that you left Angel Valley.
23 Was that decision to leave Angel Valley -- was that
24 a decision that you made with your parents?

25 **A. Yes.**

1 **Q.** Did you have conversations with your
2 parents about the reasons why you were leaving
3 Angel Valley?

4 **A. I just told them that I didn't want to be**
5 **there anymore.**

6 **Q.** Mr. Kelly has questioned you about
7 whether or not you talked to your parents
8 specifically about some of the things you've told
9 this jury. When you had the conversations with
10 your parents about your moving out and leaving
11 Angel Valley, did you discuss with them the
12 conversation that you've testified to this jury
13 about people hearing that people were unconscious
14 inside the sweat lodge?

15 **A. No. I just -- I just told them that I**
16 **didn't want to live here anymore. I just had to**
17 **get away to be able to forget about it.**

18 **Q.** Have your parents made you try to talk
19 about it?

20 **A. No.**

21 **Q.** And how have they been with you with
22 regard to your wish not to have to talk about what
23 you witnessed?

24 **A. They accepted it. They're okay with it.**
25 **It's my choice to talk about it or not.**

1 **Q.** It's your choice to talk about it or not?

2 **A. Yes.**

3 **Q.** Except for here in the courtroom?

4 **A. Yeah.**

5 **Q.** You were asked some questions by
6 Mr. Kelly about the things you do remember and the
7 things you don't remember, and specifically not
8 remembering the day before October 8th,
9 October 7th, for example?

10 **A. I don't remember what I was doing.**

11 **Q.** Do you remember the little things, or do
12 you remember the bigger things that upset you?

13 **A. I just remember the day of the sweat**
14 **lodge, like everything that happened that day.**

15 **Q.** You were asked some questions about
16 whether the media coverage and whether or not you
17 followed it. Did you ever read any newspaper
18 articles about it?

19 **A. No.**

20 **Q.** Did you ever watch the TV news about it?

21 **A. No.**

22 **Q.** You did go back to Mingus High School,
23 though, and people wanted to talk to you about it
24 there?

25 **A. The day after I actually left. But I had**

1 **been up there, and people had talked to me about it**
2 **then. Like my friends that went to the school**
3 **there -- they talked to me about it. They were**
4 **asking me about it.**

5 **Q.** And what did you say to your friends that
6 wanted to talk to you about it?

7 **A. Nothing really. I didn't -- I didn't --**
8 **I can't recall our conversations, but I know I**
9 **didn't really say much because, I mean, I didn't**
10 **want to talk about it in the first place.**

11 **Q.** Then, finally, Sara, as a witness in this
12 trial, have you been specifically asked not to talk
13 to your parents, to Fawn Foster, to the Hamiltons
14 or anybody else who might be a witness in this
15 trial?

16 **A. Yes.**

17 **Q.** And have you followed that instruction?

18 **A. Yes.**

19 MS. POLK: Thank you, Your Honor.

20 Thank you, Sara.

21 THE COURT: Thank you, Ms. Polk.

22 Are there any jury questions?

23 Ms. Rybar?

24 THE BAILIFF: No.

25 THE COURT: Okay.

1 Ms. Polk, may he Ms. Mercer be excused as
2 a witness.

3 MS. POLK: Your Honor, may she be reserved?

4 THE COURT: Ms. Mercer, you will be excused
5 temporarily as a witness. You may not be called
6 back, but you might be called back. Therefore, you
7 would need to keep following that rule of exclusion
8 I've discussed with you.

9 You understand that; correct?

10 THE WITNESS: Yes.

11 THE COURT: And then I will go ahead and
12 announce to the jury that also that we will take
13 the extended recess at this point. This is the one
14 that's been planned for some time.

15 So remember all aspects of the
16 admonition, just one of which is don't talk to
17 anyone about the case. Don't let anyone talk to
18 you about it. Keep an open mind about the case.
19 So as you have all this time, continue to follow
20 the admonition, of course.

21 We're going to be resuming, as planned,
22 Thursday, May 26th, at 9:15. That's Thursday,
23 May 26th, at 9:15. So take care, everyone.

24 And you are excused at this time,
25 Ms. Mercer.

1 And we are in recess.
2 (The proceedings concluded.)
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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 24th day of May, 2011.
18
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22

23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

04:08:59PM

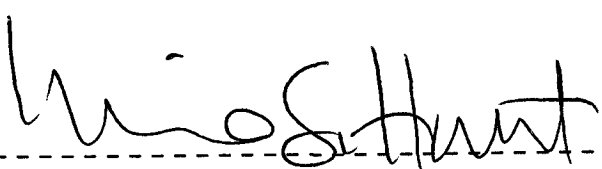
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)
4

5 I, Mina G. Hunt, do hereby certify that I
6 am a Certified Reporter within the State of Arizona
7 and Certified Shorthand Reporter in California.

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9 were taken in shorthand by me at the time and place
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15 parties or attorneys herein, nor otherwise
16 interested in the result of the within action.

17 In witness whereof, I have affixed my
18 signature this 24th day of May, 2011.
19
20

21
22 
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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

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